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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

THE HUMAN RIGHTS CODE

TUESDAY, MAY 26, 1981



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Harris, M. D. (Nipissing PC)
VICE-CHAIRMAN: Stevenson, K. R. (Durham-York PC)
Eakins, J. F. (Victoria-Haliburton L)
Eaton, R. G. (Middlesex PC)
Havrot, E. M. (Timiskaming PC)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Kerrio, V. G. (Niagara Falls L)
Lane, J. G. (Algoma-Manitoulin PC)
Laughren, F. (Nickel Belt NDP)
McNeil, R. K. (Elgin PC)
Riddell, J. K. (Huron-Middlesex L)
Stokes, J. E. (Lake Nipigon NDP)

Also taking part:

Copps, S. M. (Hamilton Centre L)
Foulds, J. F. (Port Arthur NDP)
Johnston, R. F. (Scarborough West NDP)
MacDonald, D. C. (York South NDP)
Newman, B. (Windsor-Walkerville L)
Nixon, R. F. (Brant-Oxford-Norfolk L)
Reed, J. A. (Halton-Burlington L)
Sweeney, J. (Kitchener-Wilmot L)

Clerk: Richardson, A.



LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday, May 26, 1981

The committee met at 7:37 p.m. in room No. 228.

THE HUMAN RIGHTS CODE

Consideration of Bill 7, an Act to revise and extend the Protection of Human Rights in Ontario.

Mr. Chairman: I call the meeting to order. We really have two separate meetings tonight. One was to deal with Bill 7 until eight o'clock. At eight o'clock, we will resume with the Energy estimates.

On Bill 7, I received a letter from the House leader--this was for last Thursday--which asks me to "Relay to your clerk at tonight's meeting that it would be appreciated by the House leaders and whips of all three parties if your committee could discuss and determine placing advertisements, if your committee sees fit to advertise for hearing on the rights bill, as soon as possible."

That is the purpose of the meeting at this time, to decide how we wish to proceed with Bill 7. Do we wish to advertise again? If so, will it be the same way as last time? I am open to all suggestions.

Mr. Sweeney: The point was brought up in second reading that the intent had been to hold public hearings back in February. Of course, there was an intervening event. At that point it was clearly understood that advertisements would be placed. As a matter of fact, I think one had already been placed--

Mr. Chairman: One had been placed, yes.

Mr. Eaton: We got some response.

Mr. Sweeney:--with the understanding that the public would be able to come in. It would certainly be my thought that that level of expectation has not been dampened. Therefore, in all fairness to those people who would have come in February, and who still are interested in coming, there should be a series of advertisements.

I think the \$64 question is when are you going to have the hearings, based on when you get those advertisements in. In other words, you cannot very well put an advertisement in on Thursday and say the hearings are going to start on Friday; especially with some disabled people who have difficulty making transportation arrangements. You have to give them a little bit of lead time.

It would seem to me that some decision on when the hearings are likely to begin will determine when you put those advertisements in, and whether or not you are going to go beyond the sitting of the Legislature. I do not know whether the chairman is aware that there is any approval from whoever it is you have got to get approval from to sit beyond the sitting of the Legislature.

Mr. Chairman: It would come from the House.

Mr. Sweeney: I do not know who you get it from any more.

7:40 p.m.

Mr. Eaton: On the advertisements which were placed previously, did we indicate we would advertise for two weeks or just have one advertisement under "Hearings" and ask for responses? What was it? Do you recall?

Mr. Chairman: My recollection is that it was one.

Mr. Eaton: Since we did have one and we did get responses from people who wanted to appear before the committee, is it really necessary to advertise again? Should we follow up on the responses we have and inform most people of the hearing and that they may appear before the committee?

Ms. Copps: On a point of information: For those of us who were not here at the last time, can we see the advertisement which was placed?

Mr. Chairman: Yes.

Mr. MacDonald: Also, could we know how many responses you had?

Mr. Chairman: There were 13 written responses and that many telephone responses.

Mr. MacDonald: Do you assume that those telephone responses may result in prospective witnesses?

Mr. Chairman: I think it is possible. Since the bill was reintroduced, some of these phone calls have been repeated. They appear to be anxious to either submit a brief, make a presentation, or both.

Ms. Copps moves, seconded by Mr. Sweeney, that in view of the intervening election and some confusion which may have followed thereon, the committee should advertise in the daily newspapers its intention to hold hearings with respect to Bill 7.

Mr. Eaton: In regard to the motion, Mr. Chairman: Would there be any problem with advertising and setting a date by which they had to respond, but at the same time, informing those who have already responded so they can start their presentations before the committee?

Mr. J. M. Johnson: Mr. Chairman, are we considering starting it on Thursday?

Mr. Chairman: I suppose in anticipation of that, and in view of the letter I got indicating that the House leaders of all three parties indicated they would like us to deal with it as soon as possible, I was presuming there is no reason we could not. I think it is possible that we can start hearing briefs Thursday night.

The clerk has made contact with some of the people who have briefs already in and they are ready and anxious to go. It was my understanding that this was the intention; that it has been around for a long time already and that we would like to proceed with it. So I would suggest that whether we advertise or whether we do not advertise again, we hope we could start hearing presentations on Thursday night and carry on through.

Mr. Eaton: Have you had an indication that some groups are ready to come?

Mr. Chairman: Yes.

Mr. MacDonald: Whether or not we advertise--and I would support the proposition that we should advertise just so no one feels they were not aware they had an opportunity to present--I would agree that if we have 13 written commitments, plus another seven or eight telephone commitments, we should start that thing as quickly as possible in the hope that we might be able to get this finished before the House adjourns.

That may be a forlorn hope. I suppose it depends on what the responses to the advertising would be. We may be able to slot in the written and telephoned ones in all the time that is available between now and potential adjournment. If we find that 10 days or two weeks hence we have another flood of responses, then I think we will have to take another look at the picture. But in the hope that we might be able to start with those which are already available and then pick up with those that respond to the advertising, we might be able to achieve an objective of clearing this thing off, which has been hanging fire now for the better part of a year.

Mr. Chairman: Is it agreed that we will advertise again? Is that agreed?

Mr. Lane: Mr. Chairman, I would like to think that we are going to have a cutoff date.

Mr. Chairman: Yes. Let us carry through. If we are going to advertise, we can get into that. If so, will we advertise essentially the same as last time, obviously referring back to this committee?

Mr. Eaton: Where were the ads placed last time?

Mr. Chairman: Last time the ad was placed, in French and English, in all the major dailies.

Mr. Eaton: How soon could that ad be in the paper again?

Mr. Chairman: Ten days.

Mr. Eaton: You mean, 10 days before we can get it in the paper?

Mr. Sweeney: Do you mean, if we were to contact the major dailies tomorrow, they could not have it in within a week?

Mr. Chairman: It would probably go through the advertising agency. I would suggest that we do it as soon as possible. If it can be done in a week, let us get it done in a week. But the indication that I got, when I asked the same question, was that it can take 10 days.

Mr. Sweeney: That is crazy.

Mr. Chairman: So probably the fastest way would be to use the old format and just change the dates.

Mr. Sweeney: Everything else is the same.

Mr. Copps: There is a deadline on this advertisement. It does not say the date that the advertisement was placed, but the deadline was February 16, 1981.

Mr. Sweeney: The hearings were to begin on the twenty-third. That was one week before.

Mr. Stokes: Why do we need an agent to put in an ad that is an exact duplication of something that has run before, with the exception of changing the dates and the deadline? That may be the way it is handled, but it does not necessarily have to be that way.

If we are concerned about hearing everybody who wants to make a submission and getting out of here in a reasonable period of time, we should do whatever is necessary to expedite the process. I say, cut out the middleman.

There is nothing wrong with our clerk, Andrew Richardson, going to the media and saying, "Here is an ad; put it in with all possible haste."

Mr. Eaton: If he has to contact every major daily in the province, I do not think he could have done that.

Mr. Stokes: I shall get my secretary to do it.

Mr. Chairman: I gather we are agreed on advertising, to do so the same as last time and as quickly as possible.

Mr. Eaton: How long a period of time did they have from the time the ad was in the paper till the cutoff?

Mr. Sweeney: There is no data in here as to when the ad went in, but it really does not make much difference--

Ms. Copps: There is a one-week lapse between the time they advertised and the time that the hearings began. There is no indication on there when the ad was placed.

Mr. J. M. Johnson: The question is, how much time does the committee want between the the date of the advertisement and the date of closing, a week?

Mr. Sweeney: A week.

Mr. J. M. Johnson: Well, let us say that. We are talking about finishing before the middle of June.

Ms. Copps: But we are also talking about a very important bill.

Mr. Chairman: Perhaps we could go through the chair, if we are going to try to finish this by eight o'clock.

The last time it looks as though about four weeks was allowed from when the ads were placed. But in view of the fact that it has already gone out and we are on the second time around, surely we do not have to allow that period of time.

Mr. Eaton: Is that to have their submission back in, or just to notify the clerk they want to make a submission?

Mr. MacDonald: Two weeks to allow the ad agency to get operative and two weeks for them to respond.

Mr. Chairman: That was for submissions to be in.

Mr. Eaton: How would it be if we give them a week to let the clerk know they want to make a submission, and then they can take a couple of weeks or so to get their submissions prepared?

7:50 p.m.

Mr. Chairman: If we can get the ads in in a week, allow a week to notify intent and another week to make the submission, then you are talking three weeks.

Mr. Eaton: You may not have too many more beyond those that have already indicated.

Mr. J. M. Johnson: Mr. Chairman, I find it unacceptable to wait 10 days for an ad. I agree with Mr. Stokes that the ads should be placed immediately, and if there is a problem with one agency, get another.

Mr. Chairman: To expedite it, do we have agreement that you leave it with the chair to ensure that it is done as soon as possible? If it is indeed quicker to do it through the agency because they have already done it once; if we can ascertain that and it can go out tomorrow, will you allow the chair to do that?

If it is quicker that it does not go through the agency-- I think speed is the thing you are after.

Mr. Laughren: Could I move a motion, Mr. Chairman, that the ads be placed through the clerk of the committee rather than through any ad agency? I so move.

Mr. Chairman: I think if you leave it with the chair and the clerk and give direction to the clerk that it be the quickest way possible.

Mr. Foulds: The problem with that, Mr. Chairman, with all due respect, is the reluctance of the clerk to use his many talents to expedite matters on our behalf. I think it is absolutely essential that we have an assurance from the agency if they are going to earn their bloody money--if you are going to do it that way--that they get it into the major dailies for us within four or five days.

I see no reason in the world it should take an agency that has any expertise at all--and one thing we know about Foster as the government agency of record among other things, is that it has a good deal of expertise and flexibility in pulling ads, putting them in, getting placement on prime time television. I think that for this committee, they should be able to get it in the major dailies tomorrow if we notify them tonight.

Mr. Laughren: On a point of order, Mr. Chairman, is my motion in order or is it not?

Mr. Chairman: Your motion can be in order if you want. I asked if we were agreed. I heard agreed on allowing the chair and the clerk to get it out as soon as possible. I thought the intent was speed. I thought I had agreement on that; that was my understanding.

Mr. Stokes: You do not even have a seconder, do you?

Mr. Laughren: I was hoping that since it was your idea, you would second it.

Mr. Stokes: I believe that the chair and the clerk will move with all possible haste to get the thing done. If we can do it quicker without an ad agency, I trust you will do that.

Mr. Havrot: If it is anything like the ads in the royal commission on the hazards of asbestos in the work place, where they advertised extensively, and up in Timmins, the prime area of the asbestos industry in Ontario, there was not one submission that was presented to the commission. We will see if that is any indication of what will happen. We will see.

Mr. Chairman: I suspect that it is probably is, in fact. The cutoff date is 10 days after the ad goes in, is that it? You mean the brief has to be in in 10 days.

Mr. Lane: It takes a while to get a brief ready. I think

as long as the clerk knows, we can give them a little more time on that.

Mr. Chairman: This is the second time around on the thing, you know.

Mr. Sweeney: Most of those groups will have done the spade work, the ground work for their briefs.

Mr. Eaton: Those groups that have already done the spade work, we have a list and we are contacting them to come in.

Mr. Sweeney: Even the other ones that were cut short because of the election call will have done some work. It is not as if people are going to be starting from scratch. So 10 days is reasonable.

Mr. Chairman: Are we agreed, 10 days after the ad goes in?

Mr. Foulds: Could I, from the perspective of a northern member, indicate that we should have one week for notification of the clerk and another week to submit the brief, because in fact there are a number of handicapped groups in northwestern Ontario that will have to work like blazes to actually get the submission in within a two-week period. I think they can pick up the phone and let the clerk know within a week, but if you trust the mails, it may take a month.

Mr. Chairman: We are looking for a consensus? Seven and seven then. Are we agreed? Okay.

In the meantime we would start hearing presentations from those who wish to appear before the committee as soon as possible. We have an indication that we can start Thursday night.

Mr. Eaton: Contact all the groups that are there and have them in as quickly as you can.

Mr. MacDonald: Mr. Chairman, if you have got that reconciled, I wonder if it is possible to clarify another matter.

Obviously this may take all the time we have between now and the summer adjournment. My information was that the House leaders had decided that the next estimates to come before this committee, following Energy, were to be the Ministry of Agriculture and Food.

I have asked the chairman; I have asked the minister; I have asked half a dozen other people whether that was the case, and nobody knew. I think if the House leaders have decided that the next estimates are going to be Agriculture and Food, it should be listed on the Order Paper so the chairman knows and the committee knows that, given any other decision that is made by the committee for intervening things that the committee wants to consider, we know that Agriculture and Food is next to come up. We should know at least one ahead, so that everybody, including the minister, can do their preparatory work.

Mr. J. M. Johnson: You want to be made aware of the next estimates.

Mr. MacDonald: Exactly. I would judge in the light of our discussion up to this point we are not going to be able to consider them before the summer recess, but at least I will know it is there, and if perchance something happens and you have to start with Agriculture, people will have had 24 hours' notice.

Mr. Chairman: Some were introduced today. Were they not all introduced in the House today?

Mr. MacDonald: I am sorry, I was not here today.

Mr. Chairman: I thought all the estimates were tabled today.

Mr. Stokes: They were tabled, but no indication of order.

Mr. Chairman: Would that not appear on the Order Paper?

Mr. MacDonald: It is not on the Order Paper now.

Mr. Chairman: I can certainly relay that wish to the government House leader and presumably everybody can relay it through to their own House leaders.

Mr. MacDonald: It is not only for this committee, but for every committee. There is no reason why they cannot have two or three estimates lined up so they know what the sequence is. My information from my House leader is that it was decided, perhaps tentatively, at the House leaders' meeting that Agriculture would be the second estimates, but there has been no official notification of that.

Mr. Chairman: Perhaps the matter will be resolved on Thursday. I will indicate that desire of this committee.

Mr. Stokes: This has nothing to do with anything you normally discuss in this committee, but while we are waiting for the Minister of Energy (Mr. Welch) to come perhaps we could prevail upon you, Mr. Chairman, to relay what I hope is the feelings of all of the members here that we prevail upon the Minister of Natural Resources (Mr. Pope) to set up a tour of the north in September right after Labour Day.

Mr. Chairman: That is noted, Mr. Stokes. Anything else for this meeting? I would keep this as a separate meeting and adjourn.

Mr. Sweeney: In the introductory remarks the point was made that we would have to have some idea whether or not we were going to spill over after the House sitting. Will the chairman take it upon himself to determine if that is feasible, given the number of briefs? You cannot leave that until the last minute.

Mr. Chairman: I think perhaps we will have a better indication within a couple of weeks where we are going to be. I will take it under advisement. The first meeting is adjourned.

The committee adjourned at 7:59 p.m.

Lacking nos. R-3-4, 1981.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

THE HUMAN RIGHTS CODE

TUESDAY, JUNE 2, 1981

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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McNeil, R. K. (Elgin PC)
Riddell, J. K. (Huron-Middlesex L)
Stokes, J. E. (Lake Nipigon NDP)

Substitutions:

Copps, S. M. (Hamilton Centre L) for Mr. Kerrio
Fish, S. A. (St. George PC) for Mr. Eaton
Renwick, J. A. (Riverdale NDP) for Mr. Laughren

Also taking part:

Gillies, P. A. (Brantford PC)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Johnston, R. F. (Scarborough West NDP)
Van Horne, R. G. (London North L)

Clerk: Richardson, A.

From the Ministry of Labour:

Elgie, Hon. R. G., Minister

Witnesses:

Ruby, C.

From the Coalition for Gay Rights in Ontario:

Arkin, M.

Donald, C.

Healy, D.

Monk, J.

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday, June 2, 1981

The committee met at 9:07 p.m. in room No. 228.

THE HUMAN RIGHTS CODE

Consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario.

Mr. Chairman: I call the meeting to order. I have asked the clerk to circulate an agenda for the hearings we have scheduled to date. Does everybody have a copy of that?

There are some people here who, from the records of the social development committee, are all people who indicated they wished at that time to speak to the committee on the proposed human rights amendments. I have allowed approximately a half an hour for each hearing. In addition, we have here tonight the Minister of Labour who may have a few words to say to us at the outset.

Hon. Mr. Elgie: No.

Mr. Chairman: Very few, sir?

Hon. Mr. Elgie: No, none.

Mr. Chairman: I know there have been several questions of me with regard to proceedings. I think at the last meeting the committee left it to the chair to work out with the clerk the procedure for this session.

I suggest that it does appear unlikely that we will be able to have this bill back for third reading before the recess of this session. After next Tuesday, June 9, we should have a better idea of how long the hearings might take. It would then be my intention to schedule some time to discuss whether we should sit at any time during the recess and, if so, for how long. Until we get an indication of response to the ad, it is still premature tonight to discuss that. If any of you wish to discuss, individually, your preferences on the matter, that might be in order between now and after the June 9.

It is also my understanding that we are for the period of this agenda on hearings and there will not be any discussion of the bill or any votes until after all of the hearings have been heard. We should confine ourselves during the hearings to questions of the witnesses as to clarification of the presentation.

It is also my understanding, and it would be my intention, once the hearings are over, not to allow any further participation from the public. We are prepared to hear anybody and everybody who

wishes to address this committee, but I think once that time is over when we get into clause by clause on the bill we would not, at that time, allow any further participation in this committee by the public.

Are we agreed on the agenda for the hearings to take us through to June 17 in that fashion? All right. We have two hearings for this evening. We have the minister here. Do you now wish to say a few words to us?

Hon. Mr. Elgie: Thank you, Mr. Chairman. I do not think so. I have had the opportunity now on two occasions to introduce Bill 7, or its equivalent, and to give my views before the House on second reading. Members know that I think we have before us a bill that offers what a majority of society in Ontario will agree with. There will be some who think we have gone too far and some who think we have not gone far enough.

I think we have achieved a balance which may need some revision, subsequent to the views of this committee. I look forward to these hearings and to the opportunity to hear the views of people appearing before us so that we can get a sense of what the majority of people feel about the bill which is before them. Besides that, Mr. Chairman, I do not have any other opinion.

Mr. Chairman: Thank you, Mr. Minister. As I indicated, with the number of witnesses we have, we have scheduled approximately half an hour for each. We might have an extra five or 10 minutes tonight on that. I would ask the presenters to bear that in mind and also members of the committee in asking questions. It would certainly help the chair in scheduling time and making sure that everybody gets a fair hearing if we can try to stick fairly closely to those time limits.

The first presenter this evening is Clayton Ruby. We welcome you to our committee.

Mr. Ruby: Thank you for the opportunity of addressing this committee or, to put it very shortly, the opportunity of telling the government members and perhaps others that the submission I make is that the refusal to include sexual orientation in this bill is callous, it is unthinking, and it is in the result utterly unforgivable in the life of a metropolitan community such as Toronto and for a province such as Ontario.

The problem that you face is, should sexual orientation be included? Is it the kind of thing that ought to be in a human rights code? There are some traditional tests. If something looks like a duck, talks like a duck, is called a duck, and if traditionally duck hunters all over the world in all generations have treated it as a duck, then the chances are that it is a duck and it ought to be in the duck bill.

That is put compendiously, but my submission is that discrimination against the gay community is historically just the sort of discrimination which civilized societies do not tolerate, but which societies that reflect the best interests of their residents put in human rights codes.

One of the greatest duck hunters of them all said that homosexuality had destroyed ancient Greece: "Once rife"--and I am quoting--"it extended its contagious effects like an ineluctable law of nature to the best and most manly of characters, eliminating from the reproductive processes those very men on whose offspring nature depended. The immediate result of their vice was that unnatural passion swiftly became dominant in public affairs and was allowed to spread unchecked."

That is the argument against the gay community of Adolf Hitler who, significantly, treated Jews, Gypsies, Communists and gays in exactly the same way. He put them all in extermination camps. It is not an accident that he included the gay community with that list of other minorities whom we protect in our human rights codes. Indeed, their treatment at the hands, historically, of those who oppress groups which we, historically, seek to protect is one of the strongest arguments for the inclusion in this particular code.

During the Nazi regime homosexuals were distinguished from other prisoners in camps by a pink triangle about three and one half inches high, which they were compelled to wear on the left side of their jackets and on their right trouser leg. To make them more readily distinguishable than Jews--and I speak as a Jew--pink triangles were about an inch larger than the yellow triangles we wore, and an inch larger than the red triangles worn by the political prisoner, usually Communists. Among the prison camps, inside the camps, gays were brutalized more than any other group and particularly brutalized by the other groups in the camps. Quite simply, it is not an accident that they were singled out that way by the Nazis.

The refusal to include them in this bill is not something that should go unmarked and silent. The responsibility for continuing to permit discrimination in housing and in the other areas covered by our human rights code against gays falls with each and every one of you, and you should know it. You should look the gay people in this audience in the eye and say, "I don't give a damn if you are discriminated against. I am not going to lift my finger because the party says I am not to vote that way in order to get you some rights."

You ought to know what a despicable thing that is, each and every one of you. You ought to know, as well, that it is not going to be forgotten. I am not talking about the next election. I am talking about what you are going to say to your children and to your grandchildren: "I was there. I had an opportunity to create a decent environment for these people and I refused."

I am sorry if I am getting a little angry. You see, as somebody who is Jewish, this is not remote from me because there were committees like this in Germany before the rise of Hitler that had an opportunity to do something, but sat with their arms folded and did nothing.

Secondly, I was down in the south during the civil rights movement. I went to Mississippi. I see remarkable parallels

between the cynicism I saw in the south of the United States during the 1960s and the cynicism which has marked the debate on inclusion of gay rights in our human rights code.

There is a second parallel which might interest you more, as political persons, that I draw and seek to draw, and it is this. Just as in the beginning of the 1960s, if anybody had told a group of southern legislators in Mississippi or Alabama or on Montgomery city council that that decade was going to be marked by violence and by a struggle for equality the like of which they had never seen or dreamed of, and that their children would look at them and say, "What did you do afterwards?" they would have laughed at him. They would have viewed him as some kind of commie kook, crazy or out of his head. But that is what happened.

The parallel that I seek to draw to your attention is this. I see that in the decade of the 1980s a struggle for gay equality is going to bear the same kind of mark and the same kind of impact as the struggle for equal rights between blacks and whites in the United States in the 1960s. If you don't think that is true, you are fools.

Some of you from rural communities have not had this arise yet. You are living in the equivalent of Alabama. Your communities have not yet got to the point where, even in Alabama in the mid-1960s, it took courage to say, "I think blacks ought to be treated equally." The majority of opinion was against it. But some things are going to change. If they do not change in this session of the Legislature, it will be later, but it will be expensive for the community of Ontario as a whole. I am asking you to rethink your positions.

I could go on. You have probably all seen the report, Life Together, of July 1977. If you have not seen it, I will see that somebody gives it to you. I have a copy here. There are other reports urging it.

There is another thing I want to talk about too. It may seem to you high-blown, my talk about equating the Nazi philosophy with the anti-gay movement. Take a look at some of this material. I have not got enough for every member of the committee, I am sorry. These are Xeroxed copies--I have the originals here--of pamphlets which have appeared over the last year or so in the city of Toronto.

Look at the top one, the one from the League Against Homosexuals. Look at the little slogan in the upper right with the upraised sword or knife.

Mr. Chairman: Could we have a copy for the chair?

Mr. Ruby: The chair can have the originals for now and afterwards we will make more copies for the committee members. Look at the kind of thinking that produces this kind of literature: Queers Do Not Produce: They Seduce.

9:20 p.m.

If one stops and is analytical about it, one can say that some queers undoubtedly do seduce and some queers undoubtedly do not produce children. That is the answer. Some of them do. Some do not seduce; most do not seduce. We know that. Some Jews, for example, to use a parallel, are loud and pushy. Some are not. Some blacks have rhythm and can dance and some cannot, but it is the idea of prejudice to stereotype, to categorize absolutely and to exaggerate.

Here is a quote from this literature: "Questions for all nonqueers to consider: Does our society need queers? Who supports queers? Who wants our children taught by queers?" Substitute Catholic for that or Jew or Muslim or Communist. "Some facts about queers: Queers are against God and the Christian Bible. Queers are against humanity. Queers are against every race and religion." Those are the kinds of things the Nazis said about Jews. This literature is being distributed today. The federal legislation on hate propaganda does not touch it.

Literature itself may not be so serious, you say. Are we protecting these people in any other way? How are we living up to our obligations? "Who is against queers? All decent citizens." That is the cry immemorial. All decent citizens hate Catholics, Jews or whatever it might be.

The language of the Renaissance material, on page 3 of the packet I put before you, says: "The vicious verbal attacks on our peace officers"--again the categorization in a provocative way--"and the violent orgy of property damage by street mobs of youthful vandals manipulated by the criminal element of the homosexual community." They talked this way about the night of long knives in Germany, about the Jews.

Paragraph 3 says: "The domination of a Toronto City Council meeting by the same hissing, cursing, barbaric element of the homosexual community." That is the taking of human beings, citizens of our community, and reducing them by characterization to something less than human. It refers to "hissing, cursing, barbaric". That kind of state of mind is what you are deciding to permit. I don't say not to exist. I think that people have every right they want to think what they feel like.

Under our Criminal Code, I think they are allowed to distribute this trash, but to be able to act on it in housing and jobs and other areas is unforgivable. If you do not think it is a problem, read this material.

Mr. Chairman, you have been very patient. I am aware of others following me. I will take questions from anyone who has them. Thank you.

Mr. Chairman: Thank you, Mr. Ruby. Are there any questions?

Mr. Eakins: Some of the churches support your proposal? It seems to me there are a number of various denominations that support what you propose here. Could you give us some background on this?

Mr. Ruby: I am sorry I cannot, but I think the next group to speak is more knowledgeable on that issue than I am.

Mr. R. F. Johnston: Mr. Ruby, do you have any experience in terms of your legal representation of acts of discrimination against gays, such as taking cases. What kinds of things have you run into in terms of trying to look after your clients' needs?

Mr. Ruby: It is very difficult for me to talk about that. My views on this issue are by now quite well known. I have represented a number of individuals from the gay community and the gay newspaper in charges currently against them which are now in the Supreme Court of Canada.

In the legal system the serious problem is in the things which do not ever surface. It occurs when police officers try to decide with the crown attorney what sentence to ask for in a case. There is the casual comment, "Well, he's a god-damned queer. We don't want to give him anything." Or when they are trying to exercise their discretion whether or not to withdraw a charge, again this matter of prejudice comes up.

I do not think that the formal structure of the legal system as whole is really part of it. Certainly there are safeguards. I can remember a case about three or four years ago. It was a jury case where the homosexual element came up, and I was allowed a challenge for cause. I was very surprised because I thought I had got one or two people on a jury panel of approximately 40 or 60 that had problems with that issue. To my surprise, there were 10 or 11 people who, when asked, said, "I cannot sit on this case. I cannot deal with homosexuality." It was put aside on a challenge for cause. I was surprised at how widespread it was in that one little test.

Formally, there is no real problem that I can see. The system works reasonably well. The informal discretionary aspects of it are as full of prejudice as any other aspect of Canadian life.

Mr. Riddell: First of all, I want to say, Mr. Ruby, I am one who is prepared to listen to all the debate and make a decision. But what response would you give to a parent who comes up to you and says: "Where have my rights gone to? Do I no longer have a say as to who is going to teach my children? Do I no longer have a say as to who is going to lead the cub pack or the scout pack?" What about the businessman--and this is something I am confronted with all the time--who comes up to me and says: "Where have my rights gone to? Do I no longer have a say as to whom I may hire that is going to do the best job for me?"

You can come on pretty strong in the direction that you are going, but I doubt if you have ever been in the political arena

and I doubt if you have ever had to answer questions from these people who know what this bill is all about. They come up to our office and say: "Do I no longer have any rights as a parent? Do I no longer have any rights as a businessman?" I would like to know what your response would be to that type of thing.

Mr. Ruby: You stop living the mythology of nineteenth century toryism and deal with reality. The reality is that the rights of the parent are not absolute in this province and have not been for an awfully long time. The rights of the businessman are not absolute in this province and have not been for an awfully long time. Quite simply, there are limits imposed by the Legislature, quite properly, on all those rights and their exercise. Your constituents have to stop living in the myth that they are free in that sense and recognize logical limitations.

They cannot decide not to be taught by a Catholic. It is not right; so we stopped that. And they cannot decide not to be taught by a gay, mind you, either. If the Catholic starts proselytizing for catholicism in the school room of a public school, he should be fired. If the gay starts proselytizing for sexuality of his own persuasion in the school room, he should be fired. The answer is that a good teacher or a good employee who does not violate or abuse his or her position has a right to earn a living, just like all of us have, and that the rights of people to employ whom they want and whom they want teaching their children run up against that limit.

I do not think that is too much to impose and, as a politician, I think I could explain that to my constituents, the reasonable ones. That is the answer.

Mr. Riddell: I am going to let somebody else ask questions. I just want to let you know I am not a Tory. If you were referring to me as being a Tory, I feel that I have been terribly downgraded this evening. I happen to represent the Liberals here and I just want you to know that.

Hon. Mr. Elgie: Maybe you have been upgraded.

Mr. Ruby: The only person I know who is really a Tory is my friend Susan Fish. We have been friends for a long time and she is not shocked by my views and, I hope, not offended by them either.

Mr. Chairman: Maybe a twentieth century Liberal is a nineteenth century Tory. Is that where they come from? We do not know where they come from, but they do not know either.

Mr. Ruby: Let me say nineteenth century Tories have been very successful in this province.

Mr. Renwick: Mr. Ruby, do you think the words which have become part of the language that will solve the problem are "sexual orientation"? I am asking you in your capacity as a lawyer do you believe that the words do establish the right of protection against discrimination for the gay community? Have you any idea of the background of that particular phraseology as being the one that will accomplish the goal you have in mind?

Mr. Ruby: To answer the second part of the question first, no, I have no background and have done no case research. I can give you my off-the-top-of-the-head opinion but, as a lawyer, you know you get what you pay for in legal opinions. An opinion is worth about that.

Mr. Renwick: We are prepared to pay.

9:30 p.m.

Mr. Ruby: I would think that it would do. I think sexual orientation is a word which has passed into common currency very recently, but it has acquired a fixed meaning in that short period of time. I do not think it is ambiguous.

Mr. Renwick: I take it what you are saying is that the inclusion of those words could not be subject to misinterpretation by a court?

Mr. Ruby: I would never say that. There is no word in the English language, including "the" and "and," which has not been subject to misinterpretation by courts, but I think those words are fairly reasonably well chosen to convey the intention of what you are referring to.

I would be willing to consider other alternatives, but I have not had a chance to do that. I would think these reasonably well apt. If you have got a problem, would you contact me and I will be glad to do some research on it, or if there are any other alternatives you can think of or any problem particularly around these words.

Mr. Renwick: Let me ask it in a different way. What is the content of the term "sexual orientation"?

Mr. Ruby: I think sexual preference of a fixed nature.

Mr. Renwick: That, I take it, would include homosexuality, heterosexuality and bisexuality.

Mr. Ruby: That is right.

Ms. Copp: Actually, I think Kinsey does define sexual orientation in that context. I have a question I want to ask Mr. Ruby. Mr. Riddell was kind of hitting on it when he asked how does he answer his constituents. The general public wants to know what its rights are. That seems to imply that perhaps we are offering something special in Bill 7 for sexual orientation. How would you respond to the argument, "I do not want special rights for minority groups like the gay community or the disabled community?"

Mr. Ruby: I think that is a misconception of the human rights code. It offers no special rights for anyone. All it does is guarantee certain basic minimums of decency which everyone has a right to in my view.

There is a great deal to be said for revamping the human rights code so that it does not carry a string of different groups at the end of it. I personally prefer that as a textual structure. I think it is clearer and fairer. I think British Columbia uses that phraseology, if I am correct. I am not sure which province, but I think it is British Columbia.

Then you do not have to get into this invidious political process of naming groups and answering questions. That is undoubtedly why they chose that route. Our minister has not chosen that route, and I think it is foolish. It creates a problem, but it may be in some people's interest to create problems of this sort.

Politically, I think the answer is that the question involves misconception of the human rights code. Our human rights code is drafted in such a way as to create that misconception. If you are quite willing, we can redraft it probably in a couple of hours of hard work so that it does not create that misconception any more.

Ms. Copps: With respect to the British Columbia experience, I think that they have had also some problems with the general definition in that the issue of advertising, for example, of a homosexual dance in one of the Vancouver newspapers was not allowed because it was not considered to be within the confines of the public domain. So I guess there are arguments one way or the other for that.

Mr. Ruby: That is a different kind of argument entirely. Once you include whatever phrase you want that covers sexual orientation, there is no guarantee that the courts will then do what you, as legislators, want done. That happens all the time. You must not be disappointed when they refuse to carry out what you think are clear directions in statutory language.

The point, however, is not to draw perfect legislation, but to draw legislation which you can be proud of that contains the minimum deficiencies, to include it whether it works perfectly or not. If it is a serious enough problem, later on it can be amended, or court decisions can later on be overturned. That is the process of legal life and I am not afraid of it. We do not live in a perfect world, but this legislation is just not good enough, even for the imperfect world we do live in.

Mr. Van Horne: On a point of order, Mr. Chairman: The definition was made a moment ago as to sexual orientation and I would ask you to repeat that, if you would, please. Fixed disposition? Is that what you said?

Mr. Ruby: My definition off the top of my head is that practically I would define sexual orientation as a sexual preference of a more or less fixed or permanent nature. It is not transient.

Mr. Van Horne: Would you care to elaborate on "fixed orientation"?

Mr. Ruby: I think most people who have a sexual orientation keep it through their lifetime, although it is common, as I understand the literature, for there to be changes in that orientation at various periods. But it is usually more or less fixed. There are other people who change their orientation for short periods of time. I don't think that has to be the kind of thing that is protected. It is a transient thing and it is not fixed.

Mr. Van Horne: Excuse me for interrupting, but when you say change is that a heterosexual disposition?

Mr. Ruby: Yes. Someone, for example, who is heterosexual may experiment for a period of time with homosexual relationships. We might call them bisexual. But it may be for only a short period of time--a period of emotional disruption or a period of experimentation, one or the other. I think both happen. That is normal, but I don't think the temporary phenomenon is the one that bothers me. It is the permanent one that I am concerned with, the more or less permanent.

Mr. Van Horne: If I could pursue that for a moment, the definition or description that you are giving us is your own as opposed to what my colleague was touching on a moment ago. I think she made reference to the Kinsey studies. Is that something that is supported by other reading or study or evidence that you have?

Mr. Ruby: No. It is the kind of opinion that my learned friend Mr. Renwick asked for--free and therefore of little value.

Mr. Stokes: Mr. Ruby, in this packet of information that you have provided to us, if that were said of other groups in society, would you consider it libellous?

Mr. Ruby: A group libel is not a thing which is generally known in our law. There is a criminal libel, which has never been used in modern memory, in the Criminal Code. If it were used of a particular individual, I would consider it libellous, definitely.

Mr. R. F. Johnston: Is Sheila Meagher an example there?

Mr. Ruby: Yes, sure. That may be a question of qualified privilege because it took place during an election campaign and courts are reluctant. It is just a fact, as some of you know, that you can get away with just about anything during an election campaign as long as it is bona fide. But that caveat aside I think, yes, it is libellous.

The problem with the libel laws is that in order to invoke them you have to spend a great deal of money on legal fees and court costs and you have to be able to show damages. I don't think Sheila Meagher, who was elected, can show any damages, so she cannot sue, effectively.

Ms. Fish: Mr. Ruby, a couple of the members have asked me whether you are retained by someone to be here. It was my understanding that you are here in your own capacity to present your views, but perhaps you could clarify that for committee members.

Mr. Ruby: No, I have not been retained by anybody. When I appear as counsel, I make it known that I am appearing as counsel because then I am giving somebody else's views and position. I am giving you my own views as a citizen of Ontario on matters that I happen to care about very deeply.

Ms. Fish: I think Mr. Renwick may have been pursuing this point when he was asking you about definitions; I am just not sure. Certainly you have already heard through some of the other questioning this evening an expressed concern about relationships with children which has come forward.

One of the possible areas of questioning is whether the term "sexual orientation" might apply to an understanding that would be not merely between consenting adults but referring to paedophilia right, homosexual or heterosexual. In your view, would the term "sexual orientation" provide protection in that regard and, in your view, would that have been intended by your suggestion that sexual orientation be included in this code?

Mr. Ruby: I cannot imagine that including sexual orientation would in any way provide protection for what is simply a crime. There is no constitutional jurisdiction for this Legislature to provide any kind of defence for protection from a crime. I cannot imagine the language, in the ordinary sense of it, would do that. It does not speak to the age of the person with whom one is having sex, but to the sex of the person with whom one is having sex.

9:40 p.m.

Ms. Fish: That would be my view, but I was curious whether that might not have been at the heart of some of the questioning on the matter.

Mr. Ruby: That is close to the standard mentioned before of things that I cannot imagine the court getting wrong.

Mr. R. F. Johnston: Just to come back to definitions for a minut, we have been talking about introducing two amendments around definition. One would be to add sexual orientation. The other would be to add the open-ended clause of other bona fide and reasonable grounds, or some kind of wording like that.

If, for one reason or another, it is not possible to get sexual orientation added to the code, do you think that the commission would be constrained to not make judgement in terms of homosexual cases if all that was added was the open-ended, bona fide reasonable grounds, given the fact that the Legislature very specifically, because of the hearing process and the amendment process that would be undergone, did not add the specific term "sexual orientation"?

Mr. Ruby: That is too difficult a question for me to answer. I don't know. I would really have to look at it carefully in context and do some legal research before I could answer that question. It sounds simple, but it is just not.

Mr. R. F. Johnston: Again having to do with definition, the Life Together report defined sexual orientation as homosexual or heterosexual. It gave no other definition in terms of preference of a fixed nature and that kind of thing. Would that be a satisfactory way of defining it, or should it be homosexual, heterosexual, bisexual under the definition section? Would that be adequate, or do you feel that it would be important to have the more general approach that you have brought forward, sexual preference of a fixed nature?

Mr. Ruby: I am not sure how one could with any elegance word the three different natures of sexuality so that it would fit in this section 1, unlike the other categories, which are quite general. Subject to that, there would be no objection to listing all three of them if you could find an elegant way of doing it.

Mr. R. F. Johnston: In section 1 you just have sexual orientation, but under definitions on page three, part II, there are other definitions for age, et cetera. You might have a section (f) or (g) there which would say, "sexual orientations means bisexual, heterosexual, homosexual."

Mr. Ruby:: That would be very good.

Mr. Renwick: I think the minister may recall that when the commission was before us during your estimates, I raised with him a number of pieces of literature and specifically this top piece of literature, Mr. Ruby. When the Attorney General (Mr. McMurtry) was before us, I raised again this specific piece of literature. I think the committee would be interested to know that this would not fall under the hate literature provisions of the code.

Mr. Ruby: That is right.

Mr. Renwick: You would agree, I take it then, that to an ordinary person like myself, and I would categorize that as hate literature, it would not be the grounds for the kind of protection designated in the code as hate literature.

Mr. Ruby: That is right. It is not subject to criminal process at all.

Mr. Chairman: I think many of the questions were indeed asking for your free legal advice, sir, which you did consent to give to us tonight. I don't know if the same fee applies in your office after you leave this hearing. We do thank you for appearing before us and making your views known to us.

Representing the Coalition for Gay Rights in Ontario, we have Mr. Jim Monk. With Mr. Monk are Mr. Healy, Christine Donald and Michael Arkin.

Mr. Monk: Mr. Chairman, I would like to thank you for this opportunity to speak before the committee. Earlier today we distributed copies of our brief. We put them in your mail boxes downstairs. I imagine most of you have not seen that yet, so we are passing around another copy of it. I think we can answer all of your questions. I would hope so anyway.

We have very little time left, so we are not going to read this thing to you. There are sections that cover the areas you have already raised with Mr. Ruby, but we do have some expertise of our own on the subject that we would be willing to share with you.

My name is Jim Monk. I am the chairperson of the coalition. I am nobody special. I am an auto worker from Windsor and I am rushing away from you tonight so that I can go back to my job, which was just returned to me this week, fortunately.

The other members of our coalition who are speaking here tonight are likewise not professional homosexuals. They are ordinary people, and for most of them this is their first time for this kind of presentation. We are all a little nervous. I will let them introduce themselves now, if they will.

Mr. Arkin: My name is Michael Arkin. I live here in Toronto. I am a management consultant.

Mr. Healy: My name is Dan Healy. I am 24 years of age. I am a student of languages at the University of Toronto.

Ms. Donald: My name is Christine Donald.

Mr. Monk: What we would like to do, Mr. Chairman, is just go over the introduction and summary of our brief and then entertain questions from your committee. In the introduction, we state that we think Bill 7 is in many ways an admirable bill, and the minister is quite justified in being proud of it. No doubt your committee will find ways of improving it further, and we wish you the best of luck in those efforts.

There is one omission that we feel is so serious that it really calls in question the whole concept of human rights protection in this province. Although you may not be aware of it, it affects many more people than is commonly known. Because there is no protection for gay people, or people thought to be gay in our province, Bill 7 is, in effect, actually a licence to discriminate, harass and persecute Ontario's gay minority.

In Life Together, the Ontario Human Rights Commission, appointed by the government of this province, made this recommendation: "Homosexuals have never received the same protection from discrimination as extended to their fellow citizens under the sex provisions of the Ontario Human Rights Code. As a result, they are subject to blackmail, arbitrary dismissal from their jobs and summary eviction.

"The commission recommends that the Ontario Human Rights Code be amended to extend to homosexuals the same protection against discrimination which is provided to their fellow citizens by including sexual orientation as a grounds on which discrimination is prohibited in the code."

Although we are willing to answer all of your questions, Mr. Chairman and members of the committee, we do have one of our own. We would like to know why we have not been included. We have not really heard that yet from the government or from the minister. When the minister spoke to the Labour Council of Metropolitan Toronto, he merely said it had been a decision of the cabinet and did not proceed to elaborate. We would really like to know why we are not in there, given that the human rights commission itself has recommended that we be in there.

9:50 p.m.

As the summary points out, this is the third time we have come before members of the Legislature with a brief on this issue since 1972, when the last major revisions of the code took place.

In this summary we have described some of the murders, beatings, incidents of discrimination and harassment which have occurred across this province in a de facto campaign of terror against lesbians and homosexual men. By their silence, politicians have given tacit support to a double standard of law enforcement which encourages acts of suppression, denial of basic civil rights, and the intimidation of gay victims of crime and violence.

Government agencies have manipulated and interfered with the lives of gay people in many jurisdictions. Employers and landlords have arbitrarily dismissed or evicted gay employees or tenants. Gay taxpayers have been denied equal protection in the administration of justice. Repeated recommendations by members of the Ontario Human Rights Commission that sexual orientation be included in the code have been ignored.

Pressured by a vocal and ever-growing group which calls itself the moral majority, members of all three political parties have abdicated their responsibility to exercise authentic moral leadership and have dealt with the issue of gay rights strictly in terms of political expediency. Two myths, frequently quoted in anti-gay hate literature, have been accepted at face value as reasons to deny human rights to homosexual women and men.

The contagion theory, that homosexuality is spread by proselytization and the spectre of the homosexual as child molester are products of an ignorant and vicious prejudice. Research has established that there is no relationship between child abuse and homosexuality or the determination of sexual orientation.

Some have actually claimed that there is no such thing as gay discrimination. The cases cited here, the statistics supplied to us by the minister on informal complaints to the commission, and the experience of the protective legislation in Quebec, all

argue to the contrary. A Gallup poll conducted on June 29, 1977, indicated the majority of Canadians favoured the granting of human rights to homosexuals, despite the fact that the majority of them also disliked, disapproved and did not understand homosexuality.

Our brief concludes by demonstrating that support for gay rights exists in many sectors of society. We list some of the churches, labour, business, medical and social service groups and professions and others who have come forward, as Clayton Ruby did today, and ask that you change this code to protect us as well.

Ms. Donald: There are two aspects I just wanted to pick up on after this because lesbians, I gather, are supposed to be discriminated against less than gay men. In two specific areas I think the discrimination that works against gay men works more severely against lesbians.

The first area is the economic one. In Ontario now, women still earn less than men. I think that the figure is about 60 cents to every dollar. That is to say, a lesbian living on her own with no husband or no male income to draw on is in a much worse position than a heterosexual woman, especially one with a husband, who can make up the balance. If in addition to this she has to lie, conceal, invent stories of how she spends her spare time in order to hang on to that income, she is put in a doubly disadvantaged position.

This is even worse I think for lesbian mothers for whom, if it is known that they are lesbian mothers and they lose their jobs, the welfare provisions are totally inadequate. On top of that, it follows that having less income, lesbians need to seek out cheaper housing. Here again, they have to conceal their sexuality in order to get what housing is available.

The second area I wanted to focus on is violence against women. Women commonly are harassed on the street, are sexually assaulted; this is known. Their recourse for this is supposed to be to go to the police and complain that something has happened. Just one instance will show; an instance cited in Larenne Clark's survey on group rape in Toronto. A woman who was raped went along to the police who, when she said she was a lesbian, told her: "You have no case. You deserved it."

I think under these circumstances it is clear that lesbians are suffering in a way that the government should not countenance.

Mr. Healy: I think we are ready to invite questions from the committee.

Mr. Chairman: Are there any questions of Mr. Monk or any one of the witnesses? Or may we channel them through you, Mr. Monk?

Mr. Monk: I think Mr. Arkin has to do a TV interview. He will be with us again shortly.

Ms. Copps: Just picking up on a few items in your brief. It is unfortunate that most of us did not have a chance to see it earlier. On page 13 you say that the Ontario Human Rights

Commission in the first three months of last year received 23 complaints of discrimination on the basis of sexual orientation; and that apparently came from a letter from Mr. Elgie.

Do you know what the disposition of those complaints were? Were they responded to in any way, shape or form by the commission?

Mr. Monk: Sometimes the commission in the regional offices has been able to conduct informal inquiries and attempted to serve as a mediator in these circumstances. They have no legal authority to seek redress and in most cases the complaint was simply accepted and filed and nothing further was carried on.

We are not covered in the code. No matter how willing and eager human rights' commissioners and their representatives are to stamp out discrimination, they have no powers to do so in this area.

Ms. Copps: On pages 15 and 16, I see you refer to at least two instances of discrimination involving not only people of homosexual or lesbian preference but also people who were somehow peripherally involved with them; in the case of Cate Lazarov of North Bay and in the case of John Argue in Toronto. Can you elaborate a little bit about these cases?

Mr. Monks: In both of these cases the people you mentioned are gay.

In John Argue's case, he was a swimming instructor at a public school and overheard remarks by some of the students at that school that were of an anti-gay nature. They were pretty insulting remarks. He stopped briefly and told them that kind of language was just not acceptable; it was offensive to gay people, that he was a gay person and did not wish to hear it again.

His principal heard of this and got quite upset, attempted to dismiss Mr. Argue and took proceedings to the board. There were a number of hearings about the matter. The board of education stood behind Mr. Argue but he found it necessary to leave his employment in that area because the nature of the relationship just was not conducive to remaining there any further.

Cate Lazarov's case is the most recent case. It comes from the area represented by Mr. Chairman. She had worked as a volunteer for a phone line that took distress calls from people; Telecare ministries. This phone line had already set up a system of referring gay calls to a gay organization in North Bay. It was already accepted; the referral cards were in their files.

One of the persons receiving a phone call from a gay person asking for a referral was denied and was told that the woman answering the phone was unwilling to provide that information. Cate Lazarov inquired why and asked several times to speak with the volunteer involved and was not able to.

She spoke with the director and got no satisfaction there. She finally complained to the board of Telecare. When they met to deal with the issue they did so by asking her to resign; no

redress in terms of the way the gay calls were being held was discussed.

Ms. Copps: For the cases you have documented, I imagine there are probably many others that never come to public light. Can you tell us a little bit about the Quebec experience and perhaps address the objection of some people who think that if sexual orientation is included in the code, we would be flooded with thousands of cases to the point where the commission would not be able to deal with them?

Mr. Monk: You should be, but I am afraid that would not be the situation. Even in Quebec where it is illegal to discriminate against people because of their sexual orientation, the human rights commission receives very few complaints in comparison with some of the other areas of discrimination. However, if you look in our brief under the section on the Quebec experience, that is indicative of the kind of redress we are searching for.

10 p.m.

Most gay people are unwilling to let straight people know of their sexual orientation no matter what the legal protection may be, because harassment does not go away just because it is illegal--as most women know, as most black people know, as most Jewish people know. It is a start to have it in the human rights code; by no means is it a solution.

Each year for the past three years 20 or 30 cases have been dealt with in Quebec. Our brief shows you some of the examples: a person who was fired receiving a \$10,000 settlement and a favourable letter of reference; a newspaper paying \$800 to avoid appearing in court because it denied an ad for a gay conference.

This has been operating for three years and although in Quebec they receive more complaints on the basis of sexual orientation than in the area of language, it still only amounts to two or three per cent of the cases dealt with by the commission there.

There is no reason to suspect that it would be any different here in Ontario.

Most gay people do not come out when they are discriminated against or when they are fired; they merely accept it. They move on. It will be a long time before we educate our own people to stand up for their rights. There is just a handful of us now who do that; probably in the tens of thousands. There are hundreds of thousands of gay people in this province.

Ms. Copps: I just wanted to ask one last question. I imagine that over the period of the number of years this issue has been under discussion your organization has had meetings and has been lobbying each political party. Do you have support within all political parties? Could you elaborate on the kind of response you had from the Minister of Labour prior to the introduction of Bill 7?

Mr. Monk: There are individuals within all three parties who are both opposed to and in favour of including sexual orientation in the human rights code.

The NDP took a position at one of their annual conferences that they would like to see it in the code, although they have not always been that eager to act on it, especially in a pre-election situation.

A number of members of your party--the Liberal Party of Ontario--have expressed their support for us. Others have indicated they are vehemently opposed. I do not believe that in Ontario you have a party position.

Nationally, the Liberal Party of Canada has taken a vote at the national conference and said that discrimination should be banned on grounds of sexual orientation.

Within the Conservative Party here, the only outspoken advocate is the member for St. George, Susan Fish. That is obvious because of the nature of a large number of her constituents.

We met with the Minister of Labour several years ago. He was very kind to schedule us for a half-hour appointment; I think we spent perhaps an hour and a half with him. We suspect that he is favourable. He has not said anything. He is bound by the cabinet but he can speak for himself--at least, I would hope he could speak for himself. But we have received no answer publicly as to why we are not being recommended for inclusion in the code.

It is interesting that a former Conservative member of Parliament--now the chief human rights commissioner of Canada--Gordon Fairweather, is one of the most staunch supporters of gay rights. Similarly, the Conservative MP from, I believe, Burnaby, British Columbia, has recently moved a private members' bill in the House of Commons to amend the federal human rights code.

It is not a matter that the Conservatives are against this. I think there are some members within the Conservative Party and the Liberal Party who have yet to be convinced, and we are realizing that the support from the NDP is not always as strong as we would like.

Mr. Riddell: In all fairness, you should have made reference to the former member for St. George who fought a pretty good battle for homosexual rights.

Mr. Eakins: That's for sure; one of her strong points.

Mr. Monk: That's true. We were disappointed, though, at the end. It was sad that when she resigned from office a number of us were quite mad at her for not taking a stronger position before the election. Nevertheless, there is no doubt that Margaret Campbell has been one of the most outspoken members of this Legislature for gay rights.

It is a shame that your party has only produced her, Stuart Smith and Sheila Copps; Mr. McGuigan, although he did not speak very loud, definitely made a very brave stand.

Ms. Fish: I wanted to pick up on some of the things that were addressed to Mr. Ruby, which he suggested, Mr. Monk, perhaps you could speak to. One of them was the question that Mr. Eakins had put respecting various congregations and churches which have spoken out in support of the amendment to include sexual orientation in the code.

I know that you have listed a number of organizations at the front and you have indicated right in here some of the congregations, but perhaps you could speak further about support which has come for this amendment from a number of the churches and congregations in Ontario and across the country.

Mr. Monk: At the back of our brief we list organizations that have supported us--did you mark off the churches?

Mr. Healy: I will read off the list of the churches involved. These organizations or bodies have supported the inclusion of sexual orientation in the Ontario Human Rights Code:

The Anglican Church of Canada; the Anglican Church of Ontario; the Canadian Council of Christians and Jews; the Canadian Council of Churches; Catholics for Social Change; the Christian Movement for Peace; Council on Homosexuality and Religion; the Episcopal Commission for Social Affairs of the Canadian Conference of Catholic Bishops; the First Unitarian Congregation of Metro Toronto; the Ontario House of Anglican Bishops; the Ontario Provincial Council of the Anglican Church of Canada; the Society of Friends, the Quakers; the Student Christian Movement; the Subcommittee of the Spadina/Bloor/Bathurst Interchurch Council; the United Church of Canada; the Unitarian Universalist Association of Churches in North America.

Ms. Fish: Thank you. I would also like to pursue some questioning that Mr. Johnston began again with Mr. Ruby on the possible alternative wording about a general clause which would come in that would say, "May not be dismissed or may not be refused housing, except for reasonable grounds that apply to an inability to perform a job," and so forth. You were here. You heard that line of questioning.

I wonder if you would comment and advise the committee on your views of such wording as an alternative to an amendment that would specify sexual orientation?

Mr. Monk: The code specifies a number of other categories. If you are going to maintain that system, then we think sexual orientation should be in there. The BC code does that as well and then ends with the clause that has been suggested by Mr. Johnston.

That is not a bad idea. In the one case where we have taken that to court, the BC Human Rights Commission ruled in our favour

that the refusal of the Toronto Sun to publish an ad for a gay dance, was, in fact--

Interjection: Vancouver Sun.

Mr. Monk: Yes, Vancouver Sun. Sorry. Sometimes we have the Toronto Sun on our minds too much.

The BC Human Rights Commission ruled that the refusal of the Vancouver Sun to print that ad was, in fact, not a bona fide cause for discrimination. It was reversed in the courts up to the Supreme Court of Canada and then, despite the dissent of the Chief Justice, the majority of the members of the Supreme Court of Canada ruled that in that particular case the Sun was justified because they did not want to offend their readers.

So we did not get much satisfaction out of those proceedings, but that is about the only time I know of it has actually gone to court. Maybe in the future it will be useful. There would have been no question if sexual orientation had been one of the clauses in the BC Human Rights Code.

Ms. Fish: Just so that I can be clear and perhaps other members who would be interested in this, based on your understanding--you are not a lawyer and neither am I--the one place that such alternative wording would appear to have been tested appears not, in fact, to provide the kind of protection that is being suggested by a simple amendment which would include sexual orientation. Would it be fair to draw that conclusion?

10:10 p.m.

Mr. Monk: We would like to see both, but if we are going to have a choice between one or the other, we would like sexual orientation.

Ms. Fish: All right. I have no further questions.

Mr. J. M. Johnson: Mr. Monk, you mentioned to Susan a minute ago a list of the names of several church groups that supported your group. I wonder if this is support and what type of support. Could you elaborate?

Mr. Monk: The type of support is important. They are supporting human rights for people who have a sexual orientation that differs from the majority--human rights for gay people. As the line goes, they are not condoning the so-called homosexual lifestyle. In actual effect, there are many gay life styles as there are heterosexual life styles. I really doubt that life styles can be categorized just in terms of sexual orientation to start with.

A number of those churches do not approve--most of those churches do not approve of homosexuality. Nevertheless, they feel it is important to defend the human rights of gay people and that is what they have done.

Mr. J. M. Johnson: On page 29 your statement is public support for gay rights and then you list the churches.

Mr. Monk: Gay rights are human rights for gay people.

Mr. J. M. Johnson: Is that not misleading?

Mr. Monk: I do not think so. No.

Mr. J. M. Johnson: Then define the support. Further to that, could you provide the committee with documentation of this support?

Mr. Monk: Over a period of time.

Mr. J. M. Johnson: You state you have the support of the churches. Could you provide this committee with that documentation?

Mr. Monk: If you like, sir, we will ask them to come here and speak to you themselves, which they have done many times before the human rights commission in previous hearings on the human rights code.

Interjection: Are these church groups?

Mr. Monk: A number of church groups made presentations to the human rights commission and they are in fact quoted in the report, Life Together. If you read the report, Life Together, and the two pages which deal with sexual orientation, the authors of that report make note of that fact.

Mr. Riddell: The paragraph under that heading explains it fairly well.

Mr. J. M. Johnson: No. It does explain it but certainly the first five words, "Public support for gay rights," is a little different than the last. Is it not?

Mr. Riddell: You have to read that second paragraph to know what it is they are supporting.

Mr. J. M. Johnson: But the one says "Public support for gay rights" and the other says that they have gone on record as opposing discrimination on the basis of sexual orientation. Is that different, or am I--

Mr. Monk: No, I think they are synonymous. That is the way we use them. A number of people who are opposed to protection based on sexual orientation use this argument that we are asking for special rights. The term "gay rights" is received like the term "sexual orientation." It has a certain meaning now. All it means is human rights for people of homosexual orientation--no privileges, no extra, added, special benefits that other people do not get. We want to be treated like everyone else and that is what these people have said should happen.

Mr. J. M. Johnson: If you could provide us with something a little more descriptive--

Mr. Arkin: Jim, if I may add something to that. My understanding is that many of the groups that are listed here have sent letters to the Coalition for Gay Rights in Ontario specifically stating their support for the inclusion of the term "sexual orientation" in the human rights code. Copies of those letters are on file in our offices.

Some of the organizations listed here have collective agreements with their employees and in those collective agreements sexual orientation is one of those protected classes. Some of the other organizations, like the Canadian Psychological Association, have issued public statements or have passed resolutions at their conferences stating that they support the principle that people should not be discriminated against on the basis of their sexual orientation.

Ms. Fish: It sounds to me, Mr. Chairman, if I may, that it would be fairly easy to go into the files to secure copies which could be filed with the clerk of the committee and made available to committee members who may wish to understand a little bit more detail behind the listing. I take it that is possible to do and that you would be able to do that for the committee.

Mr. Monk: We have done that before.

Ms. Fish: It is no problem then. If that answers your question, that can happen.

Mr. Eakins: You have listed three cities--Ottawa, Toronto and Windsor. Do you have letters of support from them, like motions from the council? How do you indicate the support, say, from the city of Ottawa, the city of Toronto and the city of Windsor? What is the nature of that support?

Mr. Monk: All three of those cities have passed special resolutions banning discrimination on the basis of sexual orientation among their own employees in their own city functions. In the preambles to those resolutions, they have expressed a general sentiment that they are opposed to discrimination on the basis of sexual orientation.

It is illegal for the city of Toronto, as an employer, to discriminate against its employees because they are gay; likewise in Ottawa and Windsor.

Mr. Eakins: Right.

Mr. Monk: I might point out that a number of cities in the United States have done the same. The only larger jurisdictions we are aware of that have these kinds of clauses are the province of Quebec and just recently the country of Norway.

Mr. R. F. Johnston: How many collective agreements are there that you know of in Ontario and in this jurisdiction which

have bargained for and successfully gained the sexual orientation protection?

Mr. Monk: I could not give you an exact answer because we list here the number of locals of various different unions, but we have not differentiated between whether those are resolutions of support from the local or whether they have actually been within the union contract.

I do know that UAW 195 in Windsor, which is where I am from, has been successful in four or five different collective agreements with auto parts manufacturers. The Communications Workers of Canada, I believe, were successful in getting that clause in their contract with Bell Canada.

I would really have to go back and check them all out as to what the nature of the support is that we have reached. But I would say that it would be in the order of 10 or 12--not that many.

Mr. R. F. Johnston: It would be a useful thing to know, Mr. Chairman. I have just become aware that Trent University's faculty has got that into its new agreement and that a couple of other unions have.

Mr. Monk: The University of Windsor as well.

Mr. R. F. Johnston: The point that I was trying to make in my presentation on second reading was that this is being developed within the society at the moment by groups which may not always be seen to be that progressive in terms of human rights kinds of issues. Some locals--UAW--are not always seen to be in the forefront of all things, in terms of individual rights at any rate, and it is something that has been taken on.

I wonder if I could just turn the tables here. I sense a fair amount of uptightness in the committee in talking about sexuality in general, I am sure, let alone your particular preferences. How many businessmen are there in Toronto who are organized now as gay businessmen?

Mr. Monk: It is a fair number, I would say.

Mr. Arkin: There is, as you probably know, an association of gay businesses in the city, but I do not know how many members they have. The association has been around for quite some time now. It is interesting to note that the convention bureau of this city refuses to allow them to join, even though they have all the requisites that any other organization of businesses in the city might have.

Ms. Donald: Of course there will be a lot of gay businesses that have not joined that particular group.

Mr. R. F. Johnston: Right.

I have a rhetorical question I would like to put to you. We are continually looking at this in terms of a gay rights issue and in terms of the sexual orientation. The reason for that is that

the particular persecution happens to be of gay individuals. But it would be quite possible now within the city of Toronto, it seems to me, for gay employers to reverse that discrimination against somebody who is after a job at a particular institution whose orientation might be heterosexual.

Is that not the case under the present act, as you would understand it? If you were running a business, you could ask somebody what their sexual preference was and when you found out that they were heterosexual, you would be able to say to them, "There is no place for you here." Is that not the case?

Mr. Monk: Theoretically, yes.

Mr. R. F. Johnston: I just want the committee to understand that when we are talking about this matter of sexuality, this group may have a different sexuality or sexual preference than some members of the committee, but--

Mr. Monk: Could I comment on that? One of the areas you were getting into with Mr. Ruby was this question of fixed sexual orientation. It disturbed me because the definition of sexual orientation usually includes bisexuality, which is a category of people much larger than exclusively homosexuals. Those people, too, should be protected because they happen to vary or differ their sexual orientation. In regard to gender it should mean no difference in terms of their employment, housing or access to services.

10:20 p.m.

More important, a number of people, because of their manner, their style of clothes, the way they hold themselves, are suspected of being homosexual even though they are not. They fit common stereotypes of what gay people are like, even though those stereotypes are highly inaccurate. Those people, too, deserve to be protected from discrimination even though they are heterosexual.

There are a large number of people who only have one or two homosexual experiences in their adult life, yet they are still subject to blackmail. There are straight people who have gay friends, but those people are suspected of being gay because of their associations. Why should they be discriminated against? This would be the effect of that clause, to ban all of that kind of discrimination. We see that it is no different from any of the other types of categories that you already have in the code or are proposing to add now in Bill 7.

Mr. Riddell: If the minister ever decided to include rights for homosexuals in the bill, then what Mr. Johnston brought up is something we have to give pretty careful consideration to because we want to make sure that the heterosexuals are not going to be discriminated against either.

At the beginning of Mr. Monk's presentation he posed a question, and I wonder if he might expect an answer from the minister, not only for the benefit of the group here who are

interested but for the benefit of some of those of us on the committee who have never really fully understood the reason that the minister decided not to include it in the bill.

It is not just good enough to say it was a cabinet decision. You must have gone in there and made some kind of a presentation to cabinet. Is it unfair to ask what your thoughts are on this?

Hon. Mr. Elgie: I appreciate the opportunity of appearing before the committee like this. It is a great occasion for me. I never see you otherwise in the House. We never discuss these issues. We never have an opportunity to discuss any matters. I think you know very well the position that the government has taken, namely, that one's sexual preference is not a matter that this government feels is something that should be defined specifically within the human rights legislation.

It is not a criminal offence in this country to have homosexual relationships and the government does not feel that it should be enshrined as a normal lifestyle or an acceptable lifestyle within the human rights legislation. That is it.

Mr. Riddell: I think, in all fairness, you have come out with a pretty arrogant kind of an answer. There is probably no one here who has sat in the House more than I have, but unfortunately some of us have to sit in committee when you are up in the House debating a bill. So let us not get a wrong impression going here.

Mr. Chairman: The purpose of the hearing is really not to get the minister's opinion at this stage. I think there is a forum for that. We are here to hear from Mr. Monk and his associates.

Ms. Copps: Just for the record, I would like to clarify that Mr. Riddell's question was not what is the position of the government, but what is the position of the minister personally, and whether he is prepared to articulate it.

Hon. Mr. Elgie: Ms. Copps, I appreciate that it has been some time since your party has been in power, but the fact of life is that the government position is each member's position.

Ms. Copps: That is not the statement that you made to me personally.

Hon. Mr. Elgie: That is the government's position.

Ms. Donald: I would like to clarify something further. We did not, in fact, ask what the government's position was, but why it was thus. To clarify that further, we did not ask what the government's position was, but why the government has taken up this position.

Mr. Chairman: The minister has answered a couple of questions that I suggest probably are not really in order. I think we are here to hear your brief.

Mr. Monk: We are quite willing to have the minister join our delegation.

Hon. Mr. Elgie: On the way back to Windsor?

Mr. Arkin: If I may, I have something I would like to say. One comment to the minister is that I don't know how accurate it is for him to say, with all respect, that the government's position is every member's position. I live in the riding of one of the members here. She has told me to my face that she supports the inclusion of such an amendment and that she would vote for such an inclusion.

My main comment is to you, Mr. Riddell. You asked what you would say to your constituents if they say to you: "Where are my rights? Who can teach my children? Can I say who cannot and who can?" I ask you what about the rights of the gay students in the classroom? I went to school in this province. I was born in this province and I had all my schooling in this province. I was in public school and in secondary school here.

Who considered my rights? Who considered my rights when I was a homosexual in the public school and was taught that homosexuality was bad. I saw other students and teachers and principals condone attacks on homosexual students and verbal assaults on homosexual students. Who was protecting my rights? Who was speaking for me? Who had the principles to stand up and say no?

Mr. Monk: We are quite willing to provide you with any other information, if the committee would like to come back and suggest that we dig up some more stuff. But it would really help if you would go to the human rights commission to take on that responsibility. We spent \$15,000 last year among our 30 organizations working on this issue. We understand that the government and the Legislature have a lot more resources and could probably do a more effective job than the one we are doing.

Ms. Fish: That speaks in part to the questions that Mr. Johnson was putting about some further background or documentation on the groups listed. I would be prepared to suggest that if it is a real problem in terms of photocopying material already filed with the human rights commission, the committee request the commission to convey to us copies of materials, letters and so forth that were filed with them when they considered this matter. My point is that I am trying to accommodate the question on the documentation in a fashion that is going to be the most effective and most efficient.

Mr. J. M. Johnson: There was a list of churches and church groups read into the record. I simply asked for documentation of the dozen that were mentioned. If the copies are not filed, it is certainly only a matter of 10 minutes to run off photocopies.

Mr. Chairman: I think if one copy is brought to the clerk, the clerk will take care of the copies. He will make sure that the information is supplied.

Mr. Monk: I was not speaking about your specific question. I was talking about the whole issue of documenting discrimination against gay people in this province.

Ms. Copps: Would it be possible, pursuant to the statement in the brief that there were at least 23 complaints filed in 1979, for this committee to receive copies from the Ontario Human Rights Commission of these complaints?

Hon. Mr. Elgie: I will have to get a legal opinion on that, Mr. Chairman.

Mr. Eakins: I wonder if I might ask a question for clarification. You have listed as one of the organizations of support the general meeting of the Emmanuel College Student Society. Is that the Emmanuel College of the United Church student ministers? Would you clarify that? It is on page 30 under (g). Does this indicate support from, as I take it, the student ministers? Is that the situation?

Mr. Monk: It looks like it was a resolution passed through a general meeting of that student body.

Mr. Eakins: Would it be possible to have that resolution?

Mr. Monk: We could go and ask them for it if we do not have it already.

Mr. Eakins: I just think it would be helpful. Like Mr. Riddell and others on the committee, I am anxious to hear of the support. I think our position here is to listen to the presentations and to make a decision on that basis. I would like to be able to have the resolution of support so that we can follow how they supported this.

Mr. R. F. Johnston: I have two things. I have a little trouble with our persistent request for extra documentation. I hope we do the same thing with the handicapped groups if they list groups that are in support of them, and ask them to bring forward further documentation to prove it. I am a little concerned about that.

Secondly, Mr. Renwick and I, when we were dealing with the hate literature side of this, espoused the idea that perhaps the human rights commission in Ontario should have some rule in collecting information on what one of their groups, the Symons group, at least said was a problem in our society, that is, the lack of protection for sexual orientation. Another element of the bill would be that kind of a role for this commission to do studies and to undertake investigations on a broader scale than on the individual scale. Is that something which you would support?

Mr. Monk: I will definitely ask them for that.

Ms. Copps: With respect to my request for documentation from the Ontario Human Rights Commission, I think members of the committee would agree that we would be prepared to accept that documentation without names.

Mr. Monk: Could we make one last final suggestion, Mr. Chairman? We really think that you should call your colleagues in

the adjacent province and ask their permission to have members of their human rights commission come here to tell you how their legislation is working in the area of sexual orientation. They are dealing with the issue and they have more experience with this than anyone else in this country.

Mr. Chairman: Thank you very much, Mr. Monk and members of your association, for appearing before us tonight. I think I would be remiss if I did not congratulate you on an excellent and thorough brief and for being able to appear on such short notice. We do appreciate that.

The committee adjourned at 10:33 p.m.

CADON
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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

THE HUMAN RIGHTS CODE

WEDNESDAY, JUNE 3, 1981

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Harris, M. D. (Nipissing PC)
VICE-CHAIRMAN: Stevenson, K. R. (Durham-York PC)
Eakins, J. F. (Victoria-Haliburton L)
Eaton, R. G. (Middlesex PC)
Havrot, E. M. (Timiskaming PC)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Kerrio, V. G. (Niagara Falls L)
Lane, J. G. (Algoma-Manitoulin PC)
Laughren, F. (Nickel Belt NDP)
McNeil, R. K. (Elgin PC)
Riddell, J. K. (Huron-Middlesex L)
Stokes, J. E. (Lake Nipigon NDP)

Substitutions:

Copps, S. M. (Hamilton Centre L) for Mr. Kerrio
Fish, S. A. (St. George PC) for Mr. Johnson
Renwick, J. A. (Riverdale NDP) for Mr. Laughren

Also taking part:

Boudria, D. (Prescott-Russell L)
McClellan, R. A. (Bellwoods NDP)

Clerk: Richardson, A.

From the Ministry of Labour:

Brandt, A. S., Parliamentary Assistant to the Minister
Elgie, Hon. R. G., Minister

Witnesses:

Campbell, C., Counsel for Mrs. Dagg
Dagg, A., Private Citizen

From the Ontario Chamber of Commerce:

Gray, D., Member, Labour Committee
Rubinoff, R. A., President

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, June 3, 1981

The committee met at 10:13 a.m. in room No. 228.

THE HUMAN RIGHTS CODE
(continued)

Consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario.

Mr. Chairman: I call the meeting to order. The clerk informs me that the Metro Tenants Legal Services called last night and indicated they would not be here today. They do wish to submit a written submission but, according to the clerk, we have not ascertained whether they wish another time or not.

We will be hearing two briefs this morning. The first is from Ann Dagg, represented by Charles Campbell. Would you come forward? The clerk has copies of your brief which he is circulating.

Mr. Campbell: Mr. Chairman, Mrs. Dagg has a submission in written form which has been given to you with respect to a case that involved the Ontario Human Rights Commission. I am going to ask her to explain that. Then, to assist the committee, I would like to make some observations that I think may have some bearing on your considerations with respect to the act.

Mr. Chairman: That is fine. Mrs. Dagg.

Mrs. Dagg: Every year scores of people complain about treatment they have received at the hands of the commission. One person wrote to the Globe and Mail and said that each real case cost \$112,000. So a lot of money is being spent, but I do not think it is being spent wisely.

To come to my brief then, there are four things that the Ontario Human Rights Commission should do. One, it should have a full investigation of each case, and in my case this was fine. Second, there should be a quick response. Third, there should be an impartial assesment of the evidence. Fourth, there should be complete openness to all the charges made.

My own case was regarded as one of sexual discrimination in hiring against the biology department of Wilfrid Laurier University. I felt my case was very solid. I had a great deal of evidence and yet I feel it never was heard by the commission. In effect, it was \$112,000 down the drain.

I will just tell you quickly what happened. First, the time involved to hear the case was two years. If you have a career, two years obviously cannot be taken off the career without doing great damage to it. By the time a person is in university, obviously, he also feels after two years he should stay there.

The conciliation offered to me by the university was part-time courses, and these are the sorts of jobs women get anyway. Part-time courses are pretty well taken over by women at the university. They are low paid and are the ones that we can get. Obviously, if we go to the Ontario Human Rights Commission, we are really fighting for a job equal to that of a man with similar qualifications. Perhaps many of you do not know that only four per cent of science professors in Ontario universities are women.

The second main point of contention is the impartial assessment. The lawyer of the university was able to give a written letter to the commission's counsel, Mr. Ian Hunter of London, and he incorporated much of this letter into his evidence. I was allowed to give nothing on my side, so the legal opinion was entirely on the university's side.

At a meeting with two of the professors from the university, I gave my case to the professors and to a human rights officer and they could therefore refute anything I said. By contrast, the university first gave the letter to the commission's counsel and then appeared before the commission itself in the form of President Peters, the vice-president and another top person. I was never allowed to hear what they said and I was never allowed to correct any inaccuracies. This is something that just would not be allowed to happen in a court of law.

Numbers three and four on page three are really the crux of the case, I think. When I talked to executive director, George Brown of the Ontario Human Rights Commission, he told me that the university could not be expected to hire me against its will, and that was why I was before it. No matter what the merit was, he said, in effect, that the university would not be made to hire me.

When I met with Commissioner Tom Symons and the Wilfrid Laurier president, I was even more shocked to find that they were very good friends. They had been friends for years. Tom Symons said to me in so many words--I copied it down at the time I was so shocked--he would not want to bring a board of inquiry against a small university like Wilfrid Laurier. I have that in quotes. He would not mind if perhaps it were Toronto, York or Waterloo as those were big universities.

The third and final point is the complete openness. When I was told the evidence that the members of the biology department had used against me, I took notes of these points, but I was never allowed to actually have a copy of them. If I had not taken notes, of course, I would have had no case because I was the only one who was fighting for me.

The second point on this item is that my case was said to have had a thorough evaluation, but it had not been looked at at all. When I phoned Dr. Bruce McLeod, I was just lucky that I did know someone and he could tell me this. So, again, if you did not know the right person, you would have no chance to even have your case heard. It was only these two bits of luck that enabled me to actually present my case to the commission.

The third point is--this is just a small point but it indicates the sort of thing one is up against--about the uncomplimentary rumours. I do not know if this was made up by President Peters and I do not know if it was made up by Mr. Brown. I do not know who made it up, and I am sure it is not true. I think, again, it is very upsetting to someone to be told, in effect, that I was telling lies.

10:20 a.m.

As to the next point, Dr. Bette Stephenson told me on the phone that I would be allowed a board of inquiry, but for some reason--again, I do not know why--she refused to allow me one. But since the university did offer to conciliate by allowing me to teach part-time courses, obviously, I did have a case or they would not have allowed this.

My final point was rather a frustrating and a shocking one. I wrote to Stephen Lewis for help. He agreed to help me and then he was approached by Dr. Bette Stephenson and was told that he must not help me and was given reasons, which I was not allowed to know. He phoned my lawyer, whom I had hired after the case was closed and said that he would give him the reasons if he would promise not to tell me. I think this is really very poor indeed.

To finish, I had originally gone to the commission for help and, at the end, they were really just saying nasty things about me and I was not allowed to know what these things were.

Mr. Campbell: Mr. Chairman, my involvement in this case, as Mrs. Dagg has stated, arose after she had completed her complaints procedure with the Ontario Human Rights Commission and had had a long series of dealings with complaints officers, which, in the end result, finished with the minister recommending that no board be appointed so that she had, via the human rights commission, no potential remedy. She was told that her case either had no merit or would not proceed.

At that time, on behalf of Mrs. Dagg, I brought an application for judicial review to the Supreme Court of Ontario, alleging that the decision not to give a board of inquiry to Mrs. Dagg to deal with her allegations of sexual discrimination against the university was made for improper reasons. The end result of that application for judicial review was that the matter was dismissed by the supreme court.

The observations I would like to make today pertain to the issues that were, in a sense, before the court but, ultimately, were not before the court because the court decided it could not or would not go into some of the problems that were raised by our application. The end result of my observations about this case are really serious criticisms of section 14(a) of the act and 14(b) to a lesser extent.

Mr. Chairman: Is that the new act or the old act?

Mr. Campbell: I am looking at the green copy.

Mr. Chairman: The old act.

Mr. Campbell: I am sorry. The end result will be to suggest to you a number of potential changes that I think you should explore to ensure that people who claim their rights have been violated have their own remedies and do not fall into the set of problems that Mrs. Dagg did. Perhaps I might make those suggestions now.

Ms. Copps: In order to clarify that, can you read out section 14(a) and (b) in the old act because some of us do not have a copy of the old act here.

Mr. Campbell: Section 14(a) says: "Where it appears to the commission that a complaint will not be settled, the commission shall make a recommendation to the minister as to whether or not a board of inquiry should be appointed, and the minister may, in his discretion, appoint a board of inquiry consisting of one or more persons to hear and decide the complaint."

This is the operative section of the act which determines whether or not there will be a board of inquiry appointed. It is preliminary to whether or not one even has a crack at getting any remedies under the act. This is the decision that was taken by the minister in Mrs. Dagg's case, saying we will not appoint a board, and that decision is the one that I attempted to have judicial review of in the supreme court. I will tell you the main reason for that application because it is germane.

The recommendation I am suggesting to you is that citizens have a right to have a board of inquiry appointed. It should not be within the minister's discretion.

If I can return to the facts of Mrs. Dagg's case, in the course of Mrs. Dagg's series of complaints to the inquiry officer, in the last analysis the rejection of the board of inquiry came down to two difficult facts. One, Mrs. Dagg was told by the minister that a board of inquiry would be appointed, and this is Mrs. Dagg's notation of her telephone conversation with the Minister of Labour who at that time was Dr. Bette Stephenson.

A few days later, Mrs. Dagg attended with the inquiry officers at a conciliation meeting between herself and the university, which is a standard and, presumably, appropriate procedure for conciliation officers, to try to bring the parties together. At that meeting, it was suggested to Mrs. Dagg that a part-time teaching position at a lesser salary would be an appropriate compromise position for her to take and she should accept that.

Mrs. Dagg said no, because a few days before she had been told by the minister that she would have a board of inquiry appointed. A few days after that, Mrs. Dagg was informed, "We are not going to appoint a board of inquiry." One of the reasons set out in the letter informing her of that was that she was intransigent in her conciliation proceedings.

I take the position that somebody's position in conciliation proceedings is irrelevant in determining whether or not his rights have been violated. It may be appropriate for persons to compromise, but for her to be denied access to a board of inquiry, denied the opportunity to make any arguments that her rights have been violated and make an argument for damages to be payable to her because of that, I submit is unfair.

The problem that arises because of section 14 is that there are no standards set out there. The decision whether or not to appoint a board of inquiry simply disappears into a bureaucratic decision-making process to which citizens have no access.

My challenge to the minister's discretion whether or not to appoint a board is not a challenge to inquiry officers in their efforts to conciliate, which would seem to be appropriate. But it should not be held out that the board or the conciliation officers, or whatever persons within the human rights commission actually make those decisions, have the power to determine whether or not somebody actually has the rights that the code sets out.

If I can make some comments that may be a little speculative, were this the United States and were we talking about the bill of rights there as opposed to the human rights code, a citizen would have a legal right to take his or her case to court to determine whether or not their rights had been violated and their access to remedies would not be subject to the unchallengeable discretion of the minister whether or not somebody can or cannot proceed to a board of inquiry.

The second recommendation that I would suggest is that citizens who make complaints have the right to appoint their own lawyer and have full access to the information that is being gathered by the inquiry officer. Mrs. Dagg has explained to you some of the problems she encountered.

In this investigation process she was dealing with an inquiry officer who was not obliged to disclose to her the information that had been gathered. Through diligence and persistence, she gathered as much as she could, went back to the board to say, "Hey, you haven't considered this, that and the other point," and forced them to reconsider. But that process took her two years before there was finally a decision made not to appoint a board of inquiry.

When I took on the case of bringing the application for judicial review, there were two occasions when I was approached by individuals who were offering to give me information that I was not to tell my client. That information was put to me on the basis that, "Well, this will make it obvious to you that you have no case." One was an anonymous phone call and one was a phone conversation I had with an MP who had been investigating the matter on behalf of Mrs. Dagg. Both of those persons said they knew things that Mrs. Dagg did not know and that I did not know.

I am prepared to admit they did know things I did not know and that Mrs. Dagg did not know, and I submit that that is quite wrong. It is improper and unfair to any person who is trying to pursue a complaint before the commission.

I have no doubt that any of you, if you made the right inquiries to the human rights commission, could persuade them to open their files and look up what this supposed secret is and tell you what it is, and perhaps you would be tempted to phone me and say, "Well, Mr. Campbell, here is what you did not know." But I do not want to know that. That is not fair to people who are pursuing complaints.

10:30 a.m.

Mrs. Dagg is in the position where she cannot answer whatever allegations are being made against her. Mrs. Dagg, through her persistence, was able to rebut everything that was set up to justify the decision that had been made against her in the hiring. Whether or not she would win in a court of law, I don't know, but she certainly had the arguments there. They say A, B and C, and she would have a set of facts that would rebut that.

But there remained an unspoken, secret argument that she was not to be informed about. I submit that is totally inappropriate. The only remedy for citizens who are trying to pursue complaints with the human rights commission is to be able to have full disclosure of all information that is being supplied and, secondly, to be able to appoint their own lawyers so that they will have some confidence in the investigation procedure.

The human rights commission practice, as you probably know, is to appoint counsel to act on occasion on their behalf to do an investigation. Secondly, when it comes time to appoint a board of inquiry, they will appoint counsel to do the board of inquiry on behalf of the commission. If individuals wants to have their own lawyers present, that is up to them and they have to bear the cost of that.

The thrust of my submission is that if you are serious about having rights and want people to believe that they are rights, you have got to give them the way of enforcing those rights. There is no such thing as a right without a remedy, as lawyers are fond of saying, and there are no remedies to citizens the way this act is structured.

Their access to the board is governed by the discretion of the minister, which is virtually unassailable in court. The investigations are in the hands of people who are not answerable to people who are making complaints, and they have no reason to have any faith or trust in the bureaucrats or the lawyers who have been appointed to investigate matters.

The lessons I am attempting to draw out of this case are as I have stated. You should have a right to a hearing; you should have a right to appoint your own lawyer; and you should have full disclosure of all the information that has been gathered with respect to your case.

I do not bring this forward, and neither does Mrs. Dagg, to rehash before this committee the pros and cons and the facts of her particular complaint, which had to do with sexual

discrimination in the hiring process at the university. I don't think you are interested in the facts of that, although, if you are, I am quite prepared and Mrs. Dagg is quite prepared to disclose those to you. It has to do with the procedures of the human rights commission and the fact that they are woefully inadequate. I hope this case will serve to illustrate some of those inadequacies to you.

Mr. Chairman: Thank you very much, Mrs. Dagg and Mr. Campbell.

Mr. Riddell: Just as a matter of interest, how were you discriminated against by reason of your sex? Were you applying for a position that was formerly held by a male?

Mrs. Dagg: I was applying for a position that was open. Many men and five women applied. I compared my past with the past of the man who got the job. I looked at the comments that the biology department made about "We only want to hire a man; we want to hire a reputable man; we want a father image in the man we choose," together with the fact that they had no female professor and still do not have not a single one at the university. They had just recently fired four women and hired 64 men on their faculty. I put all this together to show what I thought was discrimination.

Mr. Riddell: Thanks for the impartial assessment.

You mentioned that the lawyer for the university was able to submit a letter to the commission council, but you were not. Are you saying they would not accept your letter, or they would not use your letter as testimony?

Mrs. Dagg: I sent in my brief, but there was no evidence that it was even looked at, and he did say he received a letter from the university. It was quoted in the legal opinion which was read to me over the phone.

Mr. Riddell: That is interesting.

There was some reference made to Stephen Lewis and that he was somehow influenced by Bette Stephenson. Would you elaborate on that? How was he influenced? I just cannot imagine this of somebody like Stephen Lewis, who has certainly been among those who have been very supportive of the rights of individuals. Are you telling me that he was influenced to the point where he no longer wanted to pursue the matter?

Mrs. Dagg: Yes. I have a letter from him saying he initially thought this sounded terrible and he would be willing to help me and that my lawyer should get in touch with him. So I wrote him a letter saying "Thank you very much." Then I guess he talked to Bette Stephenson and she phoned Mr. Campbell. I do not know what I have done wrong. I find it very strange.

Mr. Riddell: I do, I really do. Of all the people who I thought would champion your cause, it would be a man like Stephen Lewis. I am trying to find out who is buying off who here if that

is the case. Then you also tell me that there were others involved, including an MP, who is reluctant to reveal information he had that you people apparently did not have.

Mrs. Dagg: That would be Stephen Lewis presumably, would it not?

Mr. Lane: As for Mr. Lewis, I am like Mr. Riddell. I cannot see him being influenced by a minister or anybody else.

Mrs. Dagg: I can show you his letter.

Mr. Lane: But does he say that he had a conversation with Bette Stephenson, or are you assuming that?

Mrs. Dagg: No, he phoned my lawyer and talked to him personally.

Mr. Campbell: Let me clarify that. Mr. Lewis presumably, at the request of Mrs. Dagg, investigated in whatever manner he deemed appropriate. I have no criticism at all of that. I had a discussion with him by phone in which he said he had been satisfied after his discussions with the minister that the matter should not be pursued.

I wanted to know why, because it obviously has some bearing on a judicial review application, the end result of which was to attempt to establish a board of inquiry. But I would not hear the answer if I could not tell my client, and whatever he had been told by the minister was not to be revealed to my client.

Now I do not challenge Mr. Lewis' good faith or integrity in doing the investigation. If I were in his shoes, I probably would have pursued the investigation in the same way and gathered up whatever information I could, even if it was of a nature that perhaps I did not want to pass on to somebody else.

What I challenge is the fact that my client is in a position that she cannot rebut whatever argument is circulating among the senior members of the human rights commission or whatever political people may be interested in it because she is not told what that argument is. She is not told because she does not have any control over the investigative procedure.

Mr. Riddell: You also indicated that the old rumour mill was operating. Would you elaborate on that? Who was spreading the rumours? What type of rumours were they spreading?

Mrs. Dagg: This was the case when I was told that I was spreading "uncomplimentary rumours"--those were the exact words. "Peter told George Brown and George Brown told me I would have to mend my fences if I even wanted this part-time job." I said, "Well, what do you mean, mend my fences?" And he said, "You have been spreading these rumours. I just said, 'I have not; I wouldn't.'"

Mr. Riddell: I did not think the rumour mill really worked outside of politics. You realize that those of us in

politics quite often have to put up with some of these rumours, which is one of the reasons personally I have become very bitter about these people sitting at head table. Apart from that, let me say that I cannot believe we are so antiquated in our human rights laws if indeed citizens have not had a right to have a board of inquiry.

I just cannot believe that and that it should be left to the minister's discretion? My goodness gracious, these ministers have enough power now without having this kind of discretion. I agree with your second point, that citizens should have a right to their own lawyer. You are telling me that a citizen does not have a right to choose his or her own lawyer?

Mrs. Dagg: You are told that it is not necessary; they will work for you. But they did not.

Mr. Riddell: And that you not able to obtain all the information that is available to the board of inquiry?

Mrs. Dagg: No.

Mr. Campbell: Mrs. Dagg's case has to do with the process of inquiry before a board of inquiry is appointed. A board of inquiry would be like a court and all the evidence presented at the board of inquiry, with respect to the case, will be put on the record and that will be open and clear to everyone.

I have no particular criticisms of the boards of inquiry that are appointed. They are too slow in proceedings, but they nevertheless run more or less like a court with full disclosure and people know what is to be decided. The board of inquiry cannot make a decision except on the basis of the evidence that is on the record.

10:40 a.m.

The problems Mrs. Dagg is describing are problems that occurred before they even decided whether or not to appoint a board of inquiry. These are preliminary questions before she even had a crack at enforcing her rights. She did not know what allegations were being made against her. She did not know what rumour she was alleged to have spread in the course of pursuing the matter.

She could demonstrate, at least to Bruce McLeod, that the board had not properly considered her case and the submissions she had made and force them to reconsider. She then went back and went through this process of mediation, which resulted in their telling her, "Here is a good compromise job; you should take it." When she said, "No, I do not think I should take it; I should be able to have a board of inquiry the way the minister said I would," they then told her, "I am sorry, you cannot have a board of inquiry because you were not sufficiently conciliatory in the mediation process."

Mr. Riddell: Obviously, these problems have not been rectified in the new act or you would not be here today.

Mr. Campbell: No, they are not rectified at all in the new act. The new act leaves the structure of the investigation procedure largely intact. The only amendment that pertains to those procedures is one that provides that "the board of inquiry is required to issue decisions within 30 days of the conclusion of the hearings." That is something that is even further down the road. That was addressed to a problem that was becoming chronic, that decisions in these matters were being delayed at great length. Presumably, this will cure a part of that, but that is not what we are here to talk about.

Mr. Riddell: Obviously. we have some work to do on this.

Ms. Fish: I wonder if it would be appropriate to hear from the minister on the point raised, not with respect to the particulars of Mrs. Dagg's case but rather on the point of procedure that Mr. Campbell has brought before the committee, namely, whether there should continue to be discretion in striking boards of inquiry; whether information that is brought before the commission in this stage that would precede a decision of a board should be made more open and available to complainants; and whether there has been a change since the Dagg case.

Mr. Chairman: I am not sure it is appropriate right now; at least, that would be my opinion. I do not know if the minister would wish to comment.

Hon. Mr. Elgie: I think, with respect, Ms. Fish, we are here to hear complaints about the previous act, comments on the present act and to take those matters into consideration when we are reviewing the bill clause by clause.

Ms. Fish: I would be prepared to stand the matter down, but I am sure I am not alone in expressing some difficulty in assessing and dealing with the suggestion for possible amendment in the absence of some clear understanding of the way in which the matter works now. If it is the wish of the minister and the committee to stand that down until such time as all deputants have been heard before the committee and some comment can be provided, that is fine. But I do find it a bit difficult, in the absence of some comment at some time, to treat the suggestions and points that have been made by this deputation with respect to a possible amendment.

Mr. Chairman: I agree.

Ms. Copps: I just wanted to ask you a couple of questions on the brief. Mr. Riddell got into this a little bit. Am I to understand that you had to present a brief or position before the Ontario human rights officer, at which point there was a representative of the university there to refute whatever you said, and that then the university was allowed to present its position in writing without your having a chance to see that position?

Mrs. Dagg: Right.

Ms. Copps: Notwithstanding the suggestion that there was some secret that they talked about, you never even saw their position paper?

Mrs. Dagg: I had no idea what they were saying against me. I was never allowed to hear it.

Ms. Copps: The other question I have I think gets on to what Ms. Fish is talking about. My understanding is that under the new act there will be some procedural changes with respect to the construction of boards of inquiry. I think Ms. Fish is getting at whether there are changes involved and whether you feel these would remedy the situation. I have some doubts myself.

What they seem to be doing is taking the power to call a board of inquiry from the minister and giving it to the human rights commission. I just wondered what your feeling was on that.

Mr. Campbell: With respect, if these are rights of citizens, the citizen should have the right to enforce whatever it is his grievance. It does not make any difference whether it is the minister or the commission. I might, depending on the government, think I would rather the commission members made it as opposed to the minister, but in the last analysis it is no answer.

Ms. Copps: I am not sure how it is set up in the present law, but under the bill they propose that the members of the board of inquiry all be appointed by the minister. Is that the way it existed in the previous law as well?

Hon. Mr. Elgie: Just for a point of clarification, at the present time the human rights commission makes a determination, in its view, whether or not there should or should not be a board of inquiry and then recommends to the minister that a board should be appointed and the minister has the discretion to appoint or not to appoint a board.

Under this bill, the human rights commission would have the power to make the determination as to whether or not there would be a board of inquiry and the minister shall then appoint one.

Ms. Copps: So the minister has lost discretionary power.

Hon. Mr. Elgie: That is right, because one of the main complaints presented before the commissioners when they were appearing together was that this discretion in a political position was something that was not appropriate in an administrative tribunal. I happen to agree with that. I know that my friend does not. Actually what he feels is that the human rights commission should not have the power at all to make a determination as to whether or not there should be a board, but that should be an absolute right. That is what you are really saying?

Mr. Campbell: Yes, Mr. Minister.

Ms. Copps: What you are basically trying to endorse is the right of a complainant to appeal in kind of an open setting and to air his grievances in an open way, rather than carrying everything on through letters et cetera. It would seem to me that the natural sequitur of that kind of amendment would be that the investigative powers presently enjoyed by the Ontario Human Rights Commission would be taken away because it would be much more effective for you to go immediately to a board of inquiry rather than going through this whole investigation, which sometimes may take months or years, and then find that you would have a board of inquiry.

You mentioned the United States. Do you have any jurisdictional examples where that kind of a board of inquiry may be presently operating. Are they deluged with cases? How do they function?

Mr. Campbell: Your question raises a very large complicated legal problem, one in which I am not able today to answer all the implications, but let me make some observations. In the United States most of the things that are covered in this act would simply be citizens' rights. If a citizen's rights were aggrieved, he would go to a lawyer and hire a lawyer and start a legal action of one sort or another in the court.

The basic policy decision that was made when this human rights commission was set up is that we do not want these things to go to court; we want a commission to determine them. We want to control, for better or for worse, the way in which these kinds of grievances are processed. I am saying that 10 years later, 15 years later or whatever it is the time has come that the bureaucrats should not sit on those rights of the citizens. The citizen should be able to enforce them.

I could say to you can the commission altogether, simply give the people these rights and let them take them to court if they want. That is one conceivable remedy and that may be the result of a federal bill of rights if it is passed and if the law evolves the way some people think it may. You may find this whole structure is superseded by rights that are laid down in the law and that people can enforce in the courts without going to the human rights commission. I am not taking that position; I am just pointing it out as a possibility.

I am content that you continue to have a human rights commission and continue to have people whose job it is to investigate these matters because a significant number of complaints are better handled by investigative officers who can talk to people and who can iron out misunderstandings as opposed to legitimate grievances.

What I am saying is that if somebody feels that his rights have been aggrieved, that is worth money. In Mrs. Dagg's case, it was worth a substantial amount of money. She should not be barred from having her remedy with her lawyer by virtue of going through this elaborate investigative procedure before somebody even decides whether or not there will be a commission struck to determine whether or not she has a chance to get a remedy.

10:50 a.m.

Ms. Copps: I'm sorry, I do not mean to monopolize your time here. In your situation, after you had gone through the preliminary investigation and been refused the board of inquiry, my understanding is that you did apply to the courts at that time to have your case pursued. On what legal basis did the court refuse that application? Can you tell us the cause?

Mr. Campbell: Yes. The application was what is called an application for judicial review, which simply means that I alleged that the minister who had made the decision had made the decision in an improper fashion or for improper reasons. The central reason that I alleged in that argument, and there were a number, was that they had turned down the appointment of a board of inquiry because Mrs. Dagg had been intransigent in the conciliation procedures.

I said, "Conciliation procedures have no bearing on whether or not somebody's rights have been abridged and whether or not a board of inquiry should be appointed." The court in its infinite wisdom said, "Well, surely that was not the reason." The letter that was sent to Mrs. Dagg sets that out as a reason, but they said that could not really be the reason. So they denied the application for judicial review and the minister's discretion not to appoint a board was upheld.

I don't think I am mistaken in recalling that the commission has now changed the form of the letters it sends out. They will not make again the mistake they made in the letter to Mrs. Dagg and leave it open that somebody could allege they had made the decision for improper reasons. I would, too, if I were in their position and wanted to protect my decision-making authority.

But all of that is beside the point. I am saying that a citizen should have a right to a board of inquiry and a right to enforce what this act claims are a citizen's legal rights by himself or herself, if that person so wishes, and not be subject to a series of discretions and incompetent investigations by a bunch of bureaucrats--with respect.

Hon. Mr. Elgie: May I just interject with a couple of remarks here?

Mr. McClellan: Let me ask one question first, just so I understand what the witness is proposing. Are you suggesting that the automatic citizen right to a board of inquiry would replace the investigation procedure and the conciliation procedure? Or are you suggesting that there should be a time limit perhaps on the investigation-conciliation process? If the citizen is dissatisfied with that, at the completion of a fixed period of time he would have an automatic right to appeal to a board of inquiry.

Mr. Campbell: I would be prepared to adopt your last suggestion as a technical means of addressing the problem I am talking about.

Mr. McClellan: You are not saying we should scrap investigation and conciliation as long as there is a right of appeal and as long as the investigation-conciliation is not dragging on for months, years or decades?

Mr. Campbell: The investigation procedure on some occasions is very useful and serves a very valid function.

Hon. Mr. Elgie: The only comment I have to make, and I am sure that many of my colleagues will know this, is that administrative tribunals in our time have followed the McRuer commission's recommendations regarding confidentiality of information obtained by investigating officers under a statute. So you know some of the problems that are involved in that. We are also saying that the role of the commission should not be a decision-making one, but simply a pass-through mechanism.

I have to tell you that I think there is a problem there. I also wonder if you really are serious in saying that someone who feels he has been wrongfully treated by a commission does not have a remedy because the Supreme Court of Ontario in two separate cases now has held that any prohibition now within a code is in itself a cause for a civil action. I believe both of them are being appealed to the Supreme Court of Canada, but as it stands today there is a right of action based upon a prohibition in the code.

Mr. Campbell: If I could briefly reply, when Mrs. Dagg came to me I said: "You have two options. One, we could attempt to sue civilly and bring the action right to the Supreme Court, alleging there is a conspiracy to violate your rights, and perhaps the court will uphold that. But before it will, you will have to go to the Supreme Court of Canada to determine that. Or we can seek judicial review of what the human rights commission has done."

As the minister says, the cases that uphold the right to sue civilly have just been argued in the Supreme Court of Canada, and one of the lawyers here today was attending there a few weeks ago to do that. It is undetermined yet whether or not you have that civil remedy.

Hon. Mr. Elgie: I understand. I said that already.

Mr. Campbell: Secondly, I appreciate what you are saying with respect to the confidentiality of information that is gathered, but surely that is the nub of the problem. Here is someone who, according to the act, has some rights and who, according to the act, ought to have some remedies. And surely she, more than anybody else, is entitled to know the arguments that are being made against her. Why is she being denied her rights? It might be appropriate that the investigating officer be instructed not to disclose that information to other persons, but surely the complainant, the person who believes she is aggrieved, ought to know what the case is against her.

Hon. Mr. Elgie: First of all, you will note that under this legislation if the initial complaint is rejected, there is a right of appeal to a full commission. If no board of inquiry is ordered by a commission, there is a right of review by the commission. But I would also have to say that the present practice of the board is for the investigating officer to review the substance of the evidence, but not the source, and ask the complainant whether or not any other information might be obtained that he is aware of to counter those positions. That is in keeping with the McRuer recommendation, and I do not think you would fundamentally disagree with that.

Mr. Campbell: I disagree in the sense that ultimately I think that whether or not the commission or the investigating officers decide to appoint a board of inquiry, the citizen should have the right to a board of inquiry.

Hon. Mr. Elgie: Yes, I understand that.

Mr. McClellan: I am sure the commission keeps statistics on the number of no board decisions coming out of complaints on an annual basis for the last four or five years. I wonder if you could pull those statistics together for the committee, together with the number of no board decisions upheld on review, just so we get an idea of the number of potentially dissatisfied complainants.

Hon. Mr. Elgie: I think it would be interesting to know the number of complaints, the number that did not go past the complaint stage, the number of no boards and the results of the board inquiries.

Would you see that that information is arranged for the committee please?

Ms. Fish: Did I understand you to say that under the present procedures the complainant would have the right to review the substance of the reply from the institution or the individuals against whom a complaint has been made that are providing evidence to the investigating officer, although the complainant would not have the right of knowing the source of such information?

Hon. Mr. Elgie: It is my understanding that the commission officer now, prior to any final determination of the investigation, sits down with the complainant or his or her representative and says, "Now this is the substance of the information," without indicating the source, "and if you have any information or any individual you wish us to contact for further information, please tell us and we will get that too, and then we will present that total sum of information to the commission for its review as a group."

Ms. Fish: May I, Mr. Chairman, direct a question then to Mrs. Dagg's solicitor? That advice, as I understood your remarks, seems to run counter to what you were suggesting was the case. I wonder if you would comment on that, please, so that I can understand whether there has been a change or whether you are saying that, in fact, that was the case. Perhaps I misunderstood your advice to this committee.

w Mr. Campbell: I was not listening as carefully as I should have been to the specifics of the procedure that the minister was outlining.

Hon. Mr. Elgie: This is an innovation since the time of this complainants' complaint before the commission.

Ms. Fish: Okay, thank you.

11 a.m.

Mr. Stokes: My first question is to the minister. Since Mrs. Dagg has been unable to get the reasons why a decision was taken by the commission, and since in a private conversation, presumably between the minister and a former member of this House, there seems to have been certain details transmitted between the two and volunteered to Mr. Campbell, as long as that information was not divulged to the complainant, there seems to be an obvious remedy here.

Hon. Mr. Elgie: The remedy is not to give the discretion to the minister.

Mr. Stokes: No. I think that had Mrs. Dagg taken her complaint to the Ombudsman, the Ombudsman Act would have insisted that that information be made available to him so that he could make a decision as to whether or not she has reason to feel aggrieved against the crown or an agency of the crown.

Hon. Mr. Elgie: I think that is correct.

Mr. Stokes: It seems unusual that if you follow that long, drawn-out process through the Ombudsman, which is, I suppose, the court of last resort, you can get that information. But if you follow the laws as they are written, it is just not possible to extract that information.

On that basis, I would like to ask Mrs. Dagg what, in her mind, led the commission to believe that the reason they were not prepared to pursue this case any further on her behalf was her intransigence during the initial hearings and the fact she might be a disturbing influence as a result of these alleged rumours that she was spreading? Can you think of any reason or any justification for those comments that are contained in your brief about this allegation that you were spreading false rumours?

My next question is, what conceivable reason do you think there could have been for denying you the right to the information upon which their final decision was based?

Mr. Campbell: I am going to answer on behalf of my client. I am going to instruct her not to speculate in that fashion. I know what her ideas on the subject are, but I think it is quite unfair to put her on the spot, to try to second-guess what gossip or what was going on in the minds of the commission. She was not told and she should not be asked publicly to state what her speculation is.

I can answer part of your question specifically with respect to why she believes that the commission made a decision based on her alleged intransigence in negotiations. The final letter advising her that a board of inquiry would not be appointed set out prominently, and, apparently, as the only reason, that she was uncompromising in negotiations. That was the reason they stated when they told her in the last analysis, when all was said and done, they were not going to appoint a board of inquiry.

With respect to the question of the rumours, Mrs. Dagg has already stated that on one occasion in one of the many discussions she had in the course of this investigation, one of the people from the human rights commission said to her, "You have been spreading rumours." She said, "What rumours have I been spreading?" And there was no answer. That is the extent of her knowledge about that. I think she also said, on that particular point, she does not know what rumours may have been alleged.

But aside from that, I am instructing her not to speculate out loud about what she thinks may have been going on in the minds of the commission.

Mr. Stokes: One final observation, this is a very unprofessional approach to a legitimate complaint under the laws of this province. Let's hope that this is an isolated case, rather than the general approach to inquiries of this nature.

Mr. Eakins: Could I ask a clarification of the minister? Does the Ombudsman have jurisdiction over the Ontario Human Rights Commission as an agency?

Hon. Mr. Elgie: I don't know what you mean by jurisdiction.

Mr. Eakins: To investigate.

Hon. Mr. Elgie: It is my belief--and I would have to have it verified--that he has the right to review any decision that has been made.

Mr. Eakins: Of complaints against the human rights commission.

Hon. Mr. Elgie: Yes.

Mrs. Dagg: Could I just mention that I actually did go to the Ombudsman's office in October. They asked for the information and they sat on it until March. Then I said, "This is ridiculous. All this time has gone by. When will I have an answer?" They said, "Not before September."

At that point, we decided to go ahead with the judicial review. The Ombudsman did have the jurisdiction but did not seem to be intending to go anywhere.

Mr. Eakins: Is the Ombudsman still continuing regardless?

Mrs. Dagg: No. When I said that, they stopped the case.

Mr. Campbell: When legal proceedings are brought, the Ombudsman bows out of the picture.

Mr. Chairman: Thank you very much, Mrs. Dagg and Mr. Campbell, for appearing before us today.

From the Ontario Chamber of Commerce, we have Mr. Rubinoff and Mr. Gray. The copy of the brief was in the folder that was distributed last night.

Mr. Rubinoff: Mr. Chairman, Mr. Minister, ladies and gentlemen, we welcome the chance to come before you today. You all have our submission.

We have with us today a member of our employer-employee relations committee, Mr. Douglas Gray. That is the committee which helped formulate this submission, so I will ask Mr. Gray to take it from here.

Mr. Gray: The brief has now been before this Legislature for some time. It was presented during the last parliament. Because Bill 7, which is the bill that is now before the House, is so similar to Bill 209, which was the earlier bill, it was felt by the chamber that the existing brief, which you have, would suffice for the purpose of our submissions on Bill 7. Rather than spending a lot of time dealing with the details of the brief, I would like to highlight a few matters which the chamber is primarily concerned about. I am not going to waste time dealing with things that I know you can all read.

The first point I think I should make is that, of course, the chamber is wholly in favour of the basic principles of the bill. There is no question about that. The chamber feels, as we all do, that this type of legislation is very important in this province. I think it is fair to say that since 1944 when the first human rights legislation was introduced in Ontario, it has had a very beneficial effect on the citizenry and for all of us.

Having said that, the chamber does have some fairly major concerns with the form of this bill. We think that in some ways the draftsmanship of it might have sacrificed some other fairly important principles which have always been considered to be fairly important by the citizenry of this province.

The first matter is really the philosophy behind the bill itself. In order to explain that, I think I should point out that the existing statute, the human rights code, has a much different philosophy. The philosophy, as I read it, is to specify what conduct an individual may not engage in. There is a very good reason for that. One of the basic purposes of any statute, as I understand it, is that an individual looking at that statute should be able to determine fairly readily what his rights are. He should be able to look at it and say, "I see I am not allowed to do that," or, "I see I am not allowed to do something else."

11:10 a.m.

Under the old code--I should not call it the old code because it still exists--under that statute that basically is the case. There are a number of prohibitions set out and they are fairly specific. There are some generalities to it, as there always will be in a piece of legislation, but basically the citizen is told that he may not publish signs and notices that have a discriminatory connotation to them. He is not allowed to do certain things in connection with the furnishing of services to the public and he is told that he is not allowed to do certain things in furnishing accommodation. In particular, he is not allowed to do certain things in connection with employment.

Now the new bill does not do that. The new bill creates, or purports to create, positive rights. It says that the citizen has the right to certain things. In particular, you find all of those things set out in sections 1 through 6 of the bill: the right to equal treatment and the enjoyment of services, goods and facilities, the right to equal treatment in the occupancy of accommodation, and so on.

Section 8 says, "No person shall infringe or do anything that results, directly or indirectly, in the infringement of a right." I must say that I have some considerable difficulty with that concept because I think it is going to be very hard for any person looking at that bill to know what it is he can or cannot do in order to comply with this statute. That is one of the fundamental difficulties of it.

Throughout the bill as well there are a number of other rather vague and uncertain terms used in many places. I know some of those vague and uncertain terms are also used in the Ontario Human Rights Code, but there are exemptions created in many places in this bill for things called "a bona fide qualification or consideration."

In most cases what is a bona fide consideration or what is a bona fide qualification is going to be the subject of a great deal of speculation. Ultimately, it will be up to a board of inquiry to make that determination. It just seems to me that the fewer times one can use that kind of vague generality the better because a citizen looking at that kind of language has very great difficulty in determining whether or not what he is doing is complying with this statute.

I do not need to belabour the point. The essence of it is set out in the brief, and I know you will all read it. I have made my point on that and I would be happy to entertain questions at the end of my brief remarks if any further clarification is required.

One of the other fairly major difficulties that the chamber has with this bill is the whole subject of handicap. I should say at the outset that the chamber has no difficulty whatever with the concept that handicapped persons should be given protection--no difficulty at all. On the other hand, the way in which it is dealt

with in this bill gives us a great deal of concern in two respects: firstly, with the definition of handicap as it is presently drafted in the bill and, secondly, with the very broad and extraordinary powers that appear to be given to a board of inquiry where some determination has been made that a right has been violated on the ground of handicap.

You will notice that handicap is defined as including not only physical handicap, with which we do not have any particular quarrel, but it also goes on to define conditions of mental retardation or impairment, learning disabilities and mental disorders.

Looking at it from the point of view of an employer, as a basic concept an employer, in our view, has a very real interest in determining whether or not, for example, someone is going to get a promotion or someone is going to be hired. In our view, the employer should be entitled to take into account the fact that someone may have a learning disability, for example. If you are going to hire a bookkeeper or if you are going to promote someone to be a bookkeeper, it may well be very relevant to know that someone has a learning disability.

The further difficulty you get into with the way the bill is drafted is that the employer's problem is compounded if there are a number of applicants for one position. Let us use the example of a bookkeeper. You have a position of bookkeeper. You have six people applying for it. One of those persons happens to have a learning disability and as a result of that learning disability he is unable to do the work as well as the other people applying; let us say there are five of them.

The difficulty the employer faces, if this bill is enacted in its present form, arises if the employer says to himself, "Perhaps the person with the learning disability can do the job, but he cannot do it as well as the other five people who are applying and I want the best person that I can get in the job." If he selects one of the persons without the learning disability, there is a very strong likelihood, in my view, from the way this bill has been drafted, that the employer would be found to have violated this statute.

If that is the case, one of the things that results from it, in my opinion, is that the five people who do not have the learning disability are in effect being discriminated against if the employer is then required to take on the person with that learning disability. I would doubt that is really the intended result, but the way the bill is drafted I believe that is a result that could be reached.

Section 16 of the bill would seem to suggest there might be some protection there, but it only says you are not infringing the act if you discriminate for the reason that in the particular circumstances the handicap renders the particular person incapable of performing the essential duties attending the exercise of the right.

If the person is perhaps capable of performing whatever the essential duties might be but cannot do them very well, then in my view the employer would not be entitled to the protection of that section. In particular, if five people apply for the job, one of whom is perhaps capable of performing whatever the essential duties might be but not nearly as well as the other four people, then I think the employer has a real problem, and the four people who are better qualified, who may well get turned down for the position as a result of what this statute says, also have a real problem.

I am not going to spend a great deal of time on most of the other aspects of the brief, starting on page six, except perhaps to highlight one or two of them. In particular, we have a real problem with section 10 of the bill, which seems to say you can be found to have discriminated against a person even though you have no intention of doing so.

For example, if you have policies in effect which might have the result of producing an adverse impact on a group of people, perhaps because of whatever characteristics that group of people might have, then as I read section 10 the person against whom the complaint was made would or could be found to have discriminated against them.

11:20 a.m.

We have some real problem with that because, in our view, the purpose of this kind of statute should be to prohibit what we think is nefarious conduct--intentional wrongdoing on the part of a person who is discriminating.

On page seven, you will notice we have set out certain submissions with respect to the dissemination of information. I do not intend to spend any time on that. I do give the citizens of this province a pretty high degree of respect in terms of their ability to read material and give it the weight it deserves, if it is garbage. I think any provision that may restrict the ability of newspapers or anyone distributing written material ought to be kept to a bare minimum, but I will leave it at that.

Citizenship: there is an exception in the bill for Canadian citizenship, "...would be deemed not to discriminate on the grounds of nationality." For example, if you prefer a Canadian citizen in some circumstances, and the grounds set out are for "cultural, educational, trade union or athletic activities," we have some difficulty in understanding why business and economic activities are not in that list. I will leave that to you.

Let me just back up for a moment to page six of the brief. There is a submission in connection with harassment. The bill seems to suggest there ought to be an obligation on an employer and on the landlord to take steps to prevent harassment in some circumstances. We have some difficulty with the suggestion that the employer should be responsible for harassment conducted by people who are not part of management, who do not have some control over the enterprise.

We also have some difficulty with the concept in terms of a landlord. I do not do very much landlord and tenant work--in fact, I do not do any--but I am just not sure there would be any legal steps a landlord could take to prevent this kind of thing from happening, if what is happening is that there is harassment conducted by one tenant against another, for example.

The concept of record of offences is something we have a little bit of concern about. The definition of record of offences is to include federal offences for which a pardon has been granted. We really have no quarrel with that. I think if once a person has paid his debt to society and has persuaded the federal Ministry of Justice that a pardon ought to be granted, and thereby the conviction is wiped out of the record, then I do not really have any problem with the concept that that should be the end of it.

The problem with the definition is that it goes further and includes "a conviction for any provincial enactment." Now there is an exception to that which I am going to touch on, but basically if someone is convicted of wilful evasion of a provincial tax, an employer, for example, would not be able to take into account the fact that person has been convicted of wilful evasion of the tax because it is a provincial offence.

The exemption is contained in section 21(6)(b), which suggests that a record of offences can be taken into account by an employer if it is a reasonable and bona fide qualification. The difficulty with that is it says the exemption is for the refusal of employment. I am just not sure whether it is intended that this provision apply if the employment relationship already exists. The example I have given in the brief is that if a truck driver has been convicted 25 times of careless driving, would it be possible for the employer to take that into account in deciding whether or not some change ought to be made in the employment relationship? I would hope the intent of that provision is to allow the exemption to apply, but I think it should be clarified. If it is not intended to apply, then I do have a concern about it.

Insurance and benefit plans are covered on page eight of the brief. The bill creates a rather significant distinction between benefit plans or insurance plans issued directly to someone taking advantage of them and those issued on a group basis through an employer. The individual plans are dealt with in section 20. An exemption is created for a plan that is offered to a specified person where it "differentiates or makes a distinction, exclusion or a preference on bona fide or reasonable grounds because of age, sex, marital status, family or handicap." That is a pretty broad exemption.

When we get to section 21, which deals with group plans, the only exemption dealing with handicap is found in section 21(3), and it only exists where a distinction is made because of a pre-existing handicap that substantially increases the risk. The section also goes on to provide that if someone is improperly excluded from a benefit plan, it is the employer who is to pay the freight and is to compensate the person who is affected.

I do not really see any meaningful distinction between an individual policy and one sold on a group basis. If you have this kind of legislation, one of the inevitable effects of it is it is going to increase the cost of policies issued on a group basis. Very often that cost is shared between employees and employers. It is going to have the effect of increasing the cost to the detriment not only of the employer but of the employees, as a group, who are supposed to benefit by it. It may well act as a disincentive to getting them in the first place.

I also have some trouble with the idea that the employer should pay the freight if it is the insurance company that issued the policy that makes the judgement that ends up excluding someone from coverage.

As you will see on page nine, we have a problem with the whole subject of contract compliance, particularly if we are going to be stuck with section 10 which provides for discrimination without any intent to do so. I am not going to belabour it.

You will see in the middle of page nine we have a problem with one provision dealing with the investigatory powers of the commission. The old section in the existing code, section 14(5), does say that a person who is being asked questions by a commission officer must not withhold documentary evidence from the officer if the officer requires that evidence.

The new provision, section 30(6), goes further. It says that "no person shall withhold from him"--the officer--"any thing that is or may be relevant to the investigation of a complaint." There is some ambiguity in that because it says withhold "any thing"--two words. I do not know whether that is intended to mean anything or any physical thing. If it means anything, then what it does mean is that a person is required to incriminate himself if he is asked questions by the commission officer.

11:30 a.m.

If someone is charged with an offence under the Criminal Code, he has no obligation to answer any questions of the police. It is a pretty fundamental concept, I think, in this jurisdiction that self-incrimination is something that is not to be forced upon a person being investigated. I think the ambiguity that now seems to exist in the bill should be corrected.

The next part of the brief on pages 10 and 11, dealing with review of a commission decision and ministerial discretion, touched to some extent, interestingly enough, on the submissions made to you this morning by Mrs. Dagg. I think the minister pointed out there are now provisions in the new bill which to some extent would tend to allay the concerns Mrs. Dagg seemed to have. The commission is now required to advise the complainant in writing of a decision not to appoint a board of inquiry and to give reasons for that decision, and the commission is also required to reconsider its decision if requested.

We have no problem with any of that. I think it will go a long way to allaying any misunderstanding of the way the commission proceeds. Our point is that it should go further because there is no provision in the bill that permits any request for reconsideration by the person against whom a complaint is made. If the commission decides to appoint a board of inquiry or to request the appointment of a board of inquiry, there is nothing in this bill that allows the person against whom the complaint is made to make any request for reconsideration or even to be told why a board of inquiry is appointed.

The minister noted this morning that the concept of ministerial discretion is removed from the old code. Our position is that that discretion should continue because what the bill now does is to place the entire administration of the code into the hands of the commission, including deciding whether or not the matter will go to a hearing.

Our position is that the decision as to whether or not to go to a board of inquiry should be made by an independent agency, an independent person, someone who has not been involved in the nitty-gritty of investigating the case, who will not be involved in actually prosecuting the case at the board of inquiry. At the moment, that function is placed in the hands of the minister. We think that function should continue to be placed in the hands of the minister for the reasons I have outlined.

We have a very minor point on the timing of the hearing. We have no quarrel with the concept that the decision should be made within 30 days after the hearing is finished. We do not really think that the hearing should have to start within 30 days of the appointment of the board of inquiry. There may be all kinds of legitimate reasons why some sort of delay is necessary, either for the commission or the complainant--or for the respondent, for that matter.

On the powers of the board of inquiry, section 38, we have real difficulty with a lot of it, particularly those provisions dealing with the ability of a board of inquiry to order, in effect, amenities to be provided "unless the cost occasioned thereby would cause undue hardship," whatever that may mean. We have a real difficulty with the concept that that kind of subjective determination could be made by a board of inquiry. I note it is proposed that there be some regulations of some sort. We do not know what those regulations may say as to what kind of guidelines may be set out.

It seems also that a board of inquiry could order that the essential duties of the employment be changed in order to accommodate someone who is handicapped, for example. In other words, the board of inquiry could second-guess the judgement of the employer as to what his requirements are in terms of the job to be done. We have a real difficulty with that concept.

We also have some difficulty with the specific provision that says the board of inquiry can order compensation for mental

anguish. It is a very nebulous concept. I note that the figure of \$5,000 in the old bill has now been increased to \$15,000 in this bill. We thought the figure of \$5,000 in the old bill was too high and we have some problem understanding why it was necessary to raise it to \$15,000.

Mr. McClellan: Inflation.

Mr. Gray: I guess.

I just want to spend one second on section 42. I think it is a real bear trap, and I do not think it is intended that section 42 have the result that may flow from it.

There are two things about it. I am sure it is just a matter of oversight, but it suggests that a trade union or a corporation, for example, could be responsible for an act or thing done by an employee. We do not think, as a matter of general principle, that a company should be responsible for anything done by any employee, that it becomes the act of the organization. If a nonmanagerial individual in the company, one who has a very low job on the totem pole, discriminates against someone in the organization or elsewhere, we do not think the organization ought to be tarred for what that person did.

It is also suggested in section 42 that the company would be responsible for all acts committed by its officers, officials, employees or agents. Nothing in there suggests that the act or omission or whatever would have to be done in that person's capacity as an officer, official, employee or agent. If somebody discriminated against his next-door neighbour, it may be that the company he works for could also be found to have discriminated against him because of what this provision says.

Those are all the submissions I have. We will be happy to entertain any questions that the members of the committee may have.

Ms. Fish: Thank you, Mr. Chairman. I have a couple of questions based on the written submission and the oral precis. Let me begin with the concern about contract compliance and cancellation of contracts.

If I understood you correctly--and perhaps I did not, so please correct me if I am wrong on this--your concern about section 23(3) related to the matter of whether there was an intent to discriminate as distinct from a finding of discrimination having occurred but no finding with respect to intent. Is it reasonable for me to infer from your remarks that you would prefer to see the human rights commission bring forth judgement rather than consider intention distinct from the result of the act?

Mr. Gray: As I have indicated already, I have difficulty with the whole concept of constructive discrimination, that somebody could be found to have discriminated when he had no intention to discriminate. He may have done something that may have an adverse impact on someone else, but with no intention to discriminate.

I think the problem is compounded if the person found to have discriminated is also at risk of having whatever contract he has with with the crown cancelled. In other words, he may wander into a terrible bear trap by doing something that on the face of it is perfectly legitimate with no intent of doing any wrong, yet he may be found to have discriminated, and if he has, he can have his contract with the crown cancelled.

11:40 a.m.

Ms. Fish: I would like to separate the two points so that I can better understand your advice to the committee. I go back again to the question of intent. In your opening remarks you used the phrase "fully supportive of nefarious conduct that was discriminatory."

Mr. Gray: Quite so.

Ms. Fish: I inferred from that that you were referring to conduct that had the specific premeditated intention of discrimination.

Mr. Gray: Yes.

Ms. Fish: You were drawing a distinction between that, as I understood your remarks, and what you are describing now as unintentional discrimination.

Mr. Gray: Yes.

Ms. Fish: Since the result remains discrimination and the code with its amendments seeks to redress discrimination, are you suggesting that the commission should be inquiring into intent and taking a judgement as to whether the corporate entity or the individual intended to discriminate when discrimination occurred?

Mr. Gray: Yes.

Ms. Fish: You are suggesting that that would be appropriate for a commission to undertake, to judge intent?

Mr. Gray: Well, that is exactly what the commission does now.

Ms. Fish: You are then suggesting that if discrimination occurred, but the commission did not find that it was intentional, there should be no redress?

Mr. Gray: Let us put it this way. It all depends on what you mean by discrimination.

Ms. Fish: No, it does not. It is a matter of a finding under the act and under the code, just as you have described it. I am working with your terms. I am not imposing separate terms.

Mr. Gray: No. I appreciate that.

I want to be clear about one thing. As I understand the existing legislation, if I do something that has an adverse impact on someone else, that activity is perfectly all right provided I have not done something with the intent to discriminate as made illegal by this green book here.

If I demote an employee because I think that employee is not doing a good job, that is perfectly all right. If, on the other hand, I demote an employee because I do not like the colour of that employee's skin, that is a completely different kettle of fish. That is what I mean by intentional discrimination.

I think section 10 is intended to make it the law that if I have a policy that applies equally to everybody, and if that policy adversely affects a group of people, then I will be found to have discriminated, even though I had no intention of discriminating against that group of people.

I have a policy, a perfectly legitimate, bona fide, business policy, with no intention to do any harm to anybody. But if that policy adversely affects a group of people because of some characteristic that group of people may have, then I am found to have discriminated. That is what I mean by discrimination with no intent.

Hon. Mr. Elgie: Let me give you an example of what Mr. Gray is talking about. I will take a specific case, but change the facts around a bit.

Situation one says, "We will not hire Sikhs as taxi drivers." That is clear-cut discrimination. Situation two says, "We will not hire taxi drivers who have beards." Here you effectively and constructively limit employment opportunities for Sikhs with that policy.

That is what that section is aimed at, constructive discrimination, which in itself was not aimed at discriminating against Sikhs, yet eliminates the opportunity for employment as a taxi driver for Sikhs, by imposing a qualification on the job.

It is not quite true, Mr. Gray, that having taken a complaint, and if the complaints officer thinks it is right, that the government contract is in jeopardy. That only comes into place once a board of inquiry, following production of evidence under the ordinary laws of evidence, finds that there has been discrimination. That board of inquiry's decision then goes to the government.

Mr. Gray:: This is my concern. Just taking the example that you have given, if I operated a taxi company and decided for reasons of public image I wanted my taxi drivers to be clean-shaven, ordinarily that would be a perfectly legitimate business

decision and proposition to put forward. If someone complains and the thing goes to a board of inquiry, and if the board of inquiry finds that because of that policy under section 10 of the act I have discriminated against them--

Hon. Mr. Elgie: I agree with you.

Mr. Gray::--then I am at risk in terms of any contract with the crown I may have.

Hon. Mr. Elgie:: It is a matter of whether or not you agree to their multicultural society, with the variety of customs and habits, be they religious or cultural, that people bring to this multicultural society, that we can allow that kind of imposition and qualification. That is really what we are talking about.

Mr. Gray: I am not sure I would put the proposition that way.

Ms. Fish: Let me put it slightly differently to you. Are you suggesting that it is inappropriate for the commission to pierce the veil of policies that may obtain in various sectors that have a clear discriminatory result, an infringement result?

Mr. Gray: Let us put it this way. If the person's real intention is to discriminate against a particular group of people and he uses a policy as an excuse that has some apparent legitimacy to it, but he is using it as a fraud, I have no problem with the commission going behind that. But if it is found that the policy or the procedure or whatever it might be is a perfectly legitimate, bona fide business policy, with no intention whatever to discriminate against anybody, then, yes, I do have a difficulty with going any further than that.

Ms. Fish: Okay. I have got some further questions on the cancellation you are suggesting results in.

I am reading section 23(3), which says, "Where an infringement of a right under section 4 is found by a board of inquiry upon a complaint and constitutes a breach of a condition under this section, the breach of condition is sufficient grounds for cancellation of the contract, grant, contribution, loan or guarantee and refusal to enter into any further contract with or make any further grant, contribution, loan or guarantee to the same person."

That does seem to me to be a discretionary factor. It is saying "is sufficient grounds". It does not say that the grant or the loan or contract shall be terminated.

Just so that I can understand you, I take it that you are disputing the appropriateness of such a permissive clause, again in order for a judgement to be made with respect to the seriousness of the resulting discrimination, and you are proposing that this committee consider an amendment that would prohibit a cancellation on such basis. Is that correct? Would that be a reasonable inference from your remarks?

Mr. Gray: That would be a reasonable inference, yes. I think that in the situation I have outlined to you if there is no intent to discriminate, there ought to be an exemption.

Ms. Fish: This clause is permissive. This clause does not require cancellation. Therefore, I would have presumed its very permissiveness would normally be there to enable the facts of the case to be reviewed to consider whether or not the cancellation is appropriate. It is not automatic.

Mr. Gray: I agree it is not automatic, but my view is that there ought to be no risk in a situation of that sort.

I do not think the person I have described and that the minister and I have been talking about should be at any risk of having his contract with the crown cancelled. If he did not intend to do anything wrong in the first place, I do not think he should be at any risk whatsoever.

Ms. Fish: You are saying that the person or the corporate entity should be under no risk whatsoever with respect to the contract, grant, contribution, loan or guarantee, notwithstanding the resulting scale or severity of discrimination or infringement of rights, as long as the person or corporate entity maintains that that discrimination was not intentional.

Mr. Gray: Not just that they maintain it was not intentional, but that in fact it was not. If the board of inquiry finds there was no intent to do anything wrong, but there has been a contravention because of section 10, I think that is a much different kettle of fish than finding that the corporate entity intended to discriminate against somebody.

11:50 a.m.

Ms. Fish: Notwithstanding the scale of the resulting discrimination or its severity.

Mr. Gray: To be sure.

Ms. Fish: Thank you, sir, I am clear on that. I have a couple of other questions, Mr. Chairman, if I may.

I would like to go back to the points that you have raised with respect to physical handicap. If my memory serves, as you were going through you made reference to concerns you had if a number of people are applying for a job and if one or some minority have a handicap as defined and the others who have applied do not have any handicap as defined. The employer proposes to award the job to the person most qualified to do it, and if that person happens not to be handicapped, you are concerned that that decision by the employer might be deemed to be discrimination against the handicapped person.

The question I put to you is that the handicapped clause is a new clause. For a very long time there have been in the code a number of other clauses respecting employment that have spoken to race, religion, sex and so forth.

f I would ask you whether, in your view, employers have found a similar problem when they have had--by way of illustration--one Jew applying out of five non-Jews. The four non-Jews are better qualified for the job. The employer awards the job to one of the better qualified non-Jews and the employer has been placed at risk with regard to a charge of discrimination against the Jew who in fact was not as well qualified.

Would you indicate to the committee whether you are suggesting that there has been a problem with identical circumstances in provisions of the code that have protected other minorities over the years?

Mr. Gray: No, there has been no problem. The reason for that is that the kinds of things you are talking about have nothing to do with the person's ability to perform a job. The person's race, creed, colour or national origin, on the face, have nothing whatsoever to do with the person's ability to perform the job.

On the other hand, the kinds of things we are talking about here, when we get into handicap--and, in particular, those parts of the definition that relate to mental deficiencies, learning disabilities and that kind of thing--are of their very nature going to have a direct impact on the person's ability to perform the work. In the kinds of examples you are giving me, there is no reason whatsoever that there be any impact on the performance of work.

That is the fundamental problem that we have with the whole concept of handicap being a grounds of discrimination itself, in particular, that part of the definition that relates to learning disabilities and mental disorders.

Ms. Fish: Are you suggesting to this committee that there is no job then for which a handicapped person could be deemed to be qualified, that in all cases of handicap all jobs are negatively impacted and that the handicapped person is incapable of performing the job?

Mr. Gray: No, I am not suggesting that for a moment. What I am suggesting is if I were an employer and I decided I did not want to hire a handicapped person because I did not like handicapped people, as far as I am concerned, that is just as reprehensible as not hiring somebody because I do not like the colour of his skin. I don't have any quarrel with that at all.

On the other hand, if I am faced with the situation of hiring somebody with a learning disability and I say to myself, "I think that person's learning disability is really going to impact on the way that person is going to be able to do the work," then that is something entirely different, particularly if I am confronted with four or five people applying for the job, of whom only one has a learning disability, but the four who do not having the learning disability can do the job a heck of a lot better.

Ms. Copps: Then there would not be discrimination because the code says all things being equal. That is where your argument errs on page five. Sorry for interrupting.

Ms. Fish: I was pursuing the question. That was precisely the point I was getting at. The illustration you had given with respect to the handicapped person was directly analogous to the illustration I gave with respect to race, creed or sex, which spoke to the persons qualified and most qualified. I am at a loss to find anything in this amendment to the code that suggests that an employer would be barred from hiring the person most qualified for the job.

Mr. Gray: Then you are on the same wavelength as I am and I am glad to hear it. In my view, there is a risk that this provision could be interpreted to mean that I have discriminated against somebody because I have selected the person best qualified for the job. If that is not the intention of the Legislature, then I would hope that the bill might be amended to make that clear because, in my opinion, it is not clear. That is all I am suggesting.

Ms. Fish: I can have the minister speak to intent at some further time, but in my view the reasonable person reading the code, as it now exists, would draw that reasonable conclusion.

I do have a further area of questioning.

Mr. Chairman: We are a little short of time. Other people have indicated they would like to speak. Could we come back to that, bearing in mind the time that we have allocated?

Ms. Fish: I shall be brief. One further area of questioning that was raised is the matter of sexual harassment. The brief expresses the concern about sexual harassment that may be undertaken by nonmanagerial employees. The suggestion is that the corporate responsibility be confined to sexual harassment undertaken by managerial employees. I refer you to section 6 which reads, in part: "a persistent sexual solicitation or advance made by a person in a position of authority." The same phrase, "position of authority," is repeated in both sections 6(a) and 6(b).

I suggest to you that a distinction between managerial and nonmanagerial does not speak to the matter of position of authority. I use as an illustration the example of a lead hand on the assembly line who is in a position of authority respecting the other workers on the line, yet in every collective agreement that I have had occasion to peruse would be considered to be within the bargaining unit and nonmanagerial.

Am I clear that your suggestion in the brief is that sexual harassment undertaken--by way of illustration--by a lead hand on the line, who is indeed a person in authority and coming under section 6, but would be nonmanagerial under any other test of collective bargaining, is conduct that the employer should not have any involvement in or responsibility for?

Mr. Gray: If that kind of conduct takes place at the hands of a lead hand and the responsible persons in the company

know nothing about it, then as far as I am concerned there is no reason to tag the company with it. There may well be a complaint against that particular person, but I don't think the company should be made responsible for that.

Ms. Fish: Just so that I am clear, you have suggested that if managerial employees engage in sexual harassment, the company could indeed be, in your words, tagged with it. You have not suggested that if it is a middle-management employee engaging in it that it is necessary for his or her immediate supervisor to have knowledge of that action prior to the company being held responsible.

You seem now to be suggesting that where it is a person also in authority but not normally considered to be managerial--by way of illustration, the lead hand--that it is necessary for the lead hand's immediate supervisor next up the line in management to know for the company to be held responsible.

Mr. Gray: Let's put it this way. It is awfully hard to start drawing lines, but I think at the very least someone in management at the company with some authority to make decisions on behalf of the company should have knowledge of what is going on before the company is made responsible for what may well be simply an isolated incident of some wrongdoing on the part of an individual for whom the company should not have to bear responsibility. That's all.

Ms. Fish: Mr. Chairman, I will stand down pursuing this matter in consideration of your remarks about further questioners.

Mr. Riddell: I would like to say I share many of your concerns and I think I alluded to that last night when I indicated that businessmen are now wondering whether their rights have been taken away somewhat by virtue of this act. If they are going to live within the letter of the law, they are probably going to hire the person--and I use the example that you gave--who may be least capable of doing the job in order to avoid the hassle they may have to go through if that person complains.

I simply use an example. I happen to be involved in farming and when I am looking for a hired man a number of people may apply. One is maybe a slow learner but he has every other qualification that is required for the job. Perhaps he has the physical makeup and the agricultural background, but he is a slow learner. Many times in a farming operation there have to be snap decisions made if you are going to save a crop or if you are going to save livestock. So I may decide to take the person who is brighter and able to make these decisions. Yet I can see I could be put through this hassle by the person who says, "I have every other qualification for that job." There is where I share one of the concerns you expressed.

As I indicated, and I will not take time now, I share many of the concerns, and I do not know whether the minister is going to have an opportunity to respond to some of the concerns to allay the fears we have. I do not know whether he is going to do that during these hearings or not. I would hope he would.

One place where I certainly do differ with you is in the discretionary powers of the minister, in other words, letting the final decision be made by a minister. You obviously are not aware of the many abuses of this kind of power on the part of ministers. If you had been in the House lately and heard our line of questioning on this business of letting good agricultural land go for other development, you would know of the kind of abuse that is made on the part of ministers in making that final decision. Surely a group of minds is better at coming up with a decision than one mind. I just cannot believe that one person can come to a better or a more fair decision than a group of people.

I think you have to realize that in many cases a decision that is made on the part of a minister, if it is left to that minister, is highly politically motivated, and I think we have got to get away from that.

Mr. Gray: Do you want me to speak to that?

Mr. Riddell: I certainly do.

Mr. Gray: I am perhaps a little more charitable about how I would view the minister making a statutory decision of this sort. I personally believe that if the minister is given a statutory power and discretion to exercise, that he will exercise it in good faith, just as I assume that if the commission is given a statutory power and a statutory discretion it will exercise it in good faith.

I have seen no evidence so far in any human rights case I have been involved in to suggest that the commission exercises bad faith or that the minister exercises bad faith. I am assuming that the minister who is well advised in these matters is going to exercise that discretion in good faith. If he does not, then of course there may well be legal remedies someplace, but I think the fact now that some independent person who is not one of the litigants makes the decision to set up or not to set up a board of inquiry is a desirable one. I would be sorry to see it go if the bill is enacted in its present form.

Mr. Riddell: If, after listening to the former testimony, you still have considerable faith in a minister who would contact a former member to inform that member that he is supposed to keep the information secret and away from the person who is being affected, you have more faith in him than I.

Mr. Gray: I am not that familiar with the Dagg case. All I do know about it is what I read in the law reports of the decision in the divisional court, and the court specifically found that the minister had acted in good faith, specifically found that Mrs. Dagg had been accorded procedural fairness and that there was nothing untoward about it at all. Regardless of what I have heard here today, I do know what the court had to say about it and that is all I know about it.

Mr. Eakins: Do you not feel that justice should appear to be done as well as be done?

Mr. Gray: That is the hope we all have, that it will not only be done but appear to be done. I must say I was happy to hear the minister say there now is more openness from the commission in terms of the information that is provided because I must say, acting on behalf of persons against whom complaints are made, I have run into the same problem that Mrs. Dagg has run into as a complainant. I have had many instances where the commission would not give me any information as to what nefarious things they were hearing about from various people I knew nothing about.

I am very happy that there now seems to be a change in that kind of approach, so that not only people like Mrs. Dagg, who is the complainant, are hopefully going to get more information about the case, but so is the person who is being complained against. Obviously, he has just as much interest in finding out what the case is against him as someone like Mrs. Dagg is going to have in finding out what the case is against her.

Mr. Stokes: I would like to pursue with you, Mr. Gray, a line of questioning that was initiated by Ms. Fish. You mentioned you had some difficulty with section 10 of the act where there was no evidence of any overt or intentional discrimination with regard to hiring practices. I would like to set a brief scenario for you and ask whether or not this is what you intended to say.

For instance, there may be an employer with, to quote your words, a bona fide policy for hiring that says he will not hire anybody with any kind of a disability or infirmity. I am dealing specifically with a physical disability as opposed to a mental deficiency or somebody who is not as alert as someone else. So someone has to go to, say, a company doctor to be assured that he passes the medical requirements. The doctor finds a 20 per cent hearing disability, but says that is fine for the kind of work he is going to be doing and he is quite capable of functioning as a normal person, or someone had a problem with diabetes but it was perfectly controlled, or somebody had had a previous back injury that had healed but there was some evidence by way of scar.

Yet, in this case, company policy was that if there was anything to indicate they were less than 100 per cent fit physically, even to being 10 pounds overweight, those people were not proper candidates for hiring, whether it be for cleanup or for working on a farm, or as a security guard. If there was any evidence at all that they were not 100 per cent fit, they just were not proper candidates for employment. Would you consider that a reprehensible practice--and that was your word--by an employer?

Mr. Gray: Let me just say that I do not have any problem with any of the examples you have given me. Also, I do not really have any problem basically with the handicap definition in the act as it relates to physical handicap. I think if a person is physically handicapped in the examples you have given me, it would have no impact on the ability of the person to do the job. I have no quarrel with that--none.

Also, the kind of policy you are talking about is not really the kind I have in mind. The kind of policy you are talking about would be a policy that would prohibit the hiring of someone based on one of the very grounds of discrimination mentioned in the bill if this bill is enacted.

12:10 p.m.

The kind of policy I am talking about is really the kind of policy the minister mentioned. Suppose as a matter of business practice I wanted my taxi drivers to be clean-shaven for public relations reasons. So I put through a policy that said people who drive my taxicabs must be clean-shaven, a perfectly legitimate thing.

Mr. Stokes: What, in your opinion, should be in this act to take care of a situation such as I have explained, where you said it is not an acceptable practice for an employer under the examples I have given you? How would you take care of that in this legislation, and yet satisfy your fears of saying there is no intentional discrimination?

Mr. Gray: In the example you have given me, there would be an intention to discriminate. In the example you have given, the policy, on its face, would intend to discriminate against handicapped people. No question about it. It would be discriminatory in and of itself.

Ms. Copps: I have a couple of questions. First of all, you have stated you have no objection to the inclusion of physical disabilities, one of the areas of contention.

Mr. Gray: I am not saying I have no objection, but I have some concern.

Ms. Copps: You said you had no quarrel with that aspect of it. I would just refer you to your brief on page five where you note with great trepidation that the board of inquiry will have extraordinary powers for removal of obstructions, et cetera. Those, presumably, would apply to the physically disabled and to no other group. How do you reconcile that with the fact that you say you have no problems with the physically disabled?

Mr. Gray: Let us put it this way. If a person is able to perform the work and happens to have a physical disability, I do not have any problem with the concept that I should be prohibited from discriminating against that person simply because he has a handicap. If I do not like handicapped people, that is my problem, but I should not allow it to interfere with the right of somebody to work for me if he can do the work.

Ms. Copps: But, again, that goes back to the beginning of page five, and Mr. Riddell mentioned this as well. You state that in a situation where somebody is barely capable of performing some duties and that other applicants perform the job much better, obviously the candidate who performs the job better will get the

job. Discrimination cannot apply in that case because the act is saying all things being equal. Taking into account all things, if the five applicants are equal then you cannot refuse to hire somebody simply because he has a disability which does not affect his ability to perform that job.

Mr. Gray: My point is that I say the bill is not as clear as that. The intention of this legislation is to protect the employer in situations that you have outlined, and I think there ought to be an amendment to make that clear. Now the reason for that is that one of the definitions of discrimination is a preference. If I prefer a person who can do the job better, and the reason I prefer the person who can do the job better is that the other person who cannot do the job as well has a learning disability, then I am preferring the person who can do the job better.

Ms. Copps: The person can do the job better, period. There is not grounds for discrimination. If a person is blind, obviously he cannot drive a cab and therefore cannot go to the commission and say, "You are discriminating against me because you did not hire me in that instance."

Mr. Gray: Unfortunately, I will not be able to take your words and quote them as authority to a court if I have to make that legal argument. I have to persuade a court or a board of inquiry based on the legislation as it reads. The only thing I am suggesting is that if you agree with me that that factual situation is one where the employer ought to be protected, I think the bill should be clarified to say that.

Ms. Copps: Can you recommend any clarifications?

Mr. Gray: Sure, I think it ought to be clearly stated that where a decision is made based on bona fide consideration of qualifications and ability to do the work, then it shall not be discriminatory if a handicapped person is thereby affected by that determination. Is it as simple as that.

Mr. Brandt: You are essentially worried about reverse discrimination. Is that the essence of your argument?

Mr. Gray: Yes, in part I am because I think if that situation comes up and the handicapped person is considered to have been discriminated against because he did not get the job, then that says he is entitled to the job even though he cannot do it as well as somebody else. If that is the case, then that somebody else is, in effect, being discriminated against.

Ms. Copps: Can you show me in the proposed act where it actually says that a person who is doing the job less well should be allowed to have the job, which is what you are implying?

Mr. Gray: My concern comes out of section 16 and also comes out of section 9(c), where it says: "discrimination means differentiation resulting in an exclusion, qualification or preference." That is 9(c).

Ms. Copps: If you go back to 16, I think it responds to the very argument that you are making. It says that a right under part 1 to nondiscrimination is not infringed by discrimination for the reason that in the particular circumstances the handicap renders that person incapable of performing the essential duties attending the exercise of the right. In other words, if they cannot perform the duties incumbent in the job, you cannot charge discrimination. You just answered your own argument.

Mr. Gray: But you have just touched on the very point I am making. The only exception in section 16 is where the person is incapable of performing the essential duties. Suppose you have a handicapped person who is capable of performing those duties all right, but cannot do them as well as someone else. Or suppose you simply decide in your own mind that he may meet the bare minimum qualifications to do the job, but you want somebody better than that.

Ms. Copps: You are entitled as an employer to choose the best candidate for the job.

Mr. Gray: I quite agree, absolutely.

Ms. Copps: I would like to get on to something else. You mentioned in your previous remarks that you felt comfortable with the discretion of the minister, just as you felt comfortable with the discretion of the human rights commission, and yet in your brief you suggest that the powers of discretion accorded the human rights commission and specifically the board of inquiry are too excessive. How do you reconcile those points?

Mr. Gray: Let me put it this way. I feel comfortable with the discretion of the minister in appointing or not appointing a board of inquiry. If I said anything earlier that might indicate that I am entirely comfortable with every discretion that is ever conferred on anybody, I am sorry. I did not mean to convey that.

Ms. Copps: You said you felt comfortable with the discretion of the minister and with the discretion of the human rights commission.

Mr. Gray: The discretion of the human rights commission in deciding whether or not to go forward with a case. There is something entirely different, in my view, between that and the board of inquiry having almost unlimited authority to impose just about anything it wants to impose.

Ms. Copps: Would you prefer then that the kinds of guarantees that are being incorporated into this act, particularly vis-a-vis the physically handicapped, be spelled out in very specific forms, that universal accessibility be guaranteed in five per cent of all new office buildings?

Mr. Gray: I think I would have to know exactly what kind of guarantees you are talking about. But I do say, yes, there should be some more specificity in the act. I quite agree with that.

Ms. Copps: But if you feel comfortable with the discretion of the human rights commission on the one hand--

Mr. Gray: In one aspect.

Ms. Copps: You did not state that when you spoke earlier. You said you felt comfortable with the discretion of the minister and comfortable with the discretion of the commission with no provisos. If you feel comfortable with that discretion, how can you say on page 12 that you are very uncomfortable with the vested power in the board to direct a party to do anything that it ought to do to achieve compliance with the act?

Mr. Gray: I didn't mean to leave the impresssion that I felt comfortable with every discretion the commission might have. The subject we were discussing at the time was whether or not a board of inquiry should be appointed. I have no problem with the commission having the authority to decide whether or not to go ahead with the case. That does not cause me any concern.

Mr. Eakins: You have some doubts about the board, though.

Mr. Gray: I have real doubts. That is only one thing that the commission can do. It can either go ahead with the case or it can decide not to go ahead with the case. That is a pretty cut-and-dried, clear determination. It can make one or the other.

12:20 p.m.

On the other hand, when you are talking about what the board of inquiry can order, there appears to be no limit. It might order a reasonably small company--most of the members of the chamber are small companies--to put in a very expensive elevator system, for example, and the board of inquiry may decide that the costs will not cause any undue hardship. It may, in fact, cause a very severe hardship. Just because one person who is sitting as a board of inquiry decides that it will not does not mean that it will not.

Ms. Copps: I can appreciate what you are saying because the issue of undue hardship does leave a lot of leverage for a commission. If you are going to endorse a principle of a board of inquiry, you are saying that a person can be guaranteed certain rights and can come before the commission. If they are not satisfied with the pursual of those rights, they can pursue it to the board of inquiry. But then you are saying that the board of inquiry should have no power to do anything based on those findings.

You leave us with two options. One is to set up another quasi-judicial board that will then enforce the opinions or the judgement of the board of inquiry. The other thing is to lay it down very specifically in the law which may create greater instances of undue hardship.

If I, in this committee, had to sit down and determine down to the letter of the law every instance in Ontario that would make

a company accessible to the physically disabled, I might cause a lot more grief to your members and to the small business community at large by applying that principle, which is the natural sequitur of what you are saying, than by allowing them discretionary power, which you said you felt comfortable with in some instances.

Mr. Gray: In one narrow instance.

Ms. Copps: Then what would the alternative be?

Mr. Gray: I would feel much more comfortable, to use your word, with at least having some kind of parameters defined on what the powers of the board of inquiry are because at least then we know two things in advance. First of all, we might be able to have some input as to what the parameters are so that we know what we are dealing with.

Second, once those parameters are set, then at least we know--at least any individual member of the Chamber of Commerce will know--exactly what kind of potential liability he is facing. But I do not think there is any way anybody can determine from this bill what that is.

Mr. Eakins: It is like having an Ombudsman and then paying no attention to him.

Ms. Copps: I would say that the issue of parameters is well articulated on your brief on page 12 when you say that the board can direct the party to do anything it can to achieve compliance with the act. Basically, the act and the regulations in the act are the parameters under which we are acting now.

Mr. Gray: No. It says it can order the party to do any thing.

Ms. Copps: To achieve compliance with the act.

Mr. Gray: That may be. That may mean, to take an extreme example--I am not suggesting any board of inquiry would do it--that theoretically at least a board of inquiry could order the person to pay a million dollars or to build a whole new building.

Ms. Copps: I believe there is an upper limit on that.

Mr. Gray: That is only for mental anguish. It is now \$15,000.

Ms. Copps: They can only order changes to stretch it. I do not think they can order cash awards above \$5,000.

Mr. Gray: It is \$15,000 in the new bill, and that is only for mental anguish. I do not know what other heads of general damage they might be able to come up with for other categories of payment.

Ms. Copps: According to your brief it is \$5,000.

Mr. Gray: That was under the old bill. That was under Bill 209. Under Bill 7, in this House it is now \$15,000. That has been one change.

Mr. Chairman: Are there any further questions for Mr. Rubinoﬀ or Mr. Gray? If not, thank you very much, gentlemen, for appearing before us today, for your brief and for answering our questions. I declare the meeting adjourned until eight o'clock on Thursday evening. There is a change of the room for Thursday evening to 151.

The committee adjourned at 12:25 p.m.

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Governing

Article



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

THE HUMAN RIGHTS CODE

THURSDAY, JUNE 4, 1981

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Riddell, J. K. (Huron-Middlesex L)
Stokes, J. E. (Lake Nipigon NDP)

Substitutions:

Copps, S. M. (Hamilton Centre L) for Mr. Kerrio
Fish, S. A. (St. George PC) for Mr. Havrot
Renwick, J. A. (Riverdale NDP) for Mr. Laughren

Also taking part:

Boudria, D. (Prescott-Russell L)
Cassidy, M. (Ottawa Centre NDP)
Kolyn, A. (Lakeshore PC)
McClellan, R. A. (Bellwoods NDP)
McGuigan, J. F. (Kent-Elgin L)
Sweeney, J. (Kitchener-Wilmot L)

Clerk: Richardson, A.

Assistant to Clerk: Van Bommel, D.

From the Ministry of Labour:

✓ Brandt, A. S., Parliamentary Assistant to the Minister

Witnesses:

Barrett, H. F., Member, Canadian Association For Free Expression
Fromm, P., Private Citizen
Qaadri, M. S., Editor, Islam Canada

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, June 4, 1981

The committee met at 8:07 p.m. in room No. 151.

THE HUMAN RIGHTS CODE
(continued)

Resuming consideration of Bill 7, an Act to revise and extend Protection of Human Rights in Ontario.

Mr. Chairman: I call the meeting to order. Mr. Brandt is the parliamentary assistant to the Minister of Labour (Mr. Elgie). The Minister of Labour has indicated that he will sit in on all of the hearings he possibly can and if he is unavoidably absent from some of them--and I know the opposition members particularly appreciate the time constraints that are on ministers these days--

Mr. Stokes:: Has he got a note?

Mr. Chairman: Andy has a note for him, I think.

Mr. Brandt: If I might, Mr. Chairman; the minister is in the House this evening and as most of the members know he is speaking to the matter of plant closures, which is a very important matter of provincial concern at the moment. I will be here to take notes and report back to the minister on any comments which are made, and I will be filling in for him this evening. But he will attempt to attend any other meetings that are possible, where representations are being made through the balance of the next two or three weeks.

Mr. Chairman: Okay. When both of you are away, Mr. Brandt, we will have the same thing from the deputy minister.

We have three presentations tonight. We have allowed approximately half an hour per brief. We do have a little extra time tonight, but I would ask that the members, as always, bear the time in mind and that we are here to get as much public input as we can. It is their time to have input on the proposed amendments to the human rights code and we will have ample time to put our own views forward when we get into the clause by clause discussion.

The first presenter tonight, representing the Islam Canada newspaper, is Mohammed S. Qaadri. Did I pronounce that correctly, Mr. Qaadri?

Mr. Qaadri: Bismillah -i- Rehman -i- Rahim; In the name of Allah, the most compassionate, the most merciful. Mr. Chairman, members of the committee, I thank you very much for the opportunity to make this submission.

We congratulate the government of Ontario and especially the Minister of Labour and his staff for this excellent piece of

legislation. Indeed, Ontario has an excellent record for enacting such legislation, which has made and is going to make this province a better place to live in.

We believe that every well-integrated society is based on some ultimate premises which guide or ought to guide its activities. The preamble of Bill 7 rightly expresses this ideal. The key words in the preamble are "human family." That is, a collection of brothers, sisters, cousins, et cetera. The creation of such a compassionate family of human beings, we believe, is the aspiration of the government of Ontario. It is very near to the Islamic ideal. The holy Koran says:

O mankind,
We have created you from one male and one female,
And made you in various nations and tribes,
So that you may know each other.

Let me take a minute to explain this. The first phrase is, "O mankind." Remember, it does not address, "O Christians," or, "O Muslims," or, "O Canadians." It addresses mankind. It says, "We have created you from one male and one female," referring to Adam and Eve. That establishes my relations with you and that is exactly what is mentioned in the preamble of Bill 7.

A human right, in our opinion, is not an end in itself, but a means to an end. Its value is not intrinsic but instrumental. We understand the preamble is the spirit and the 48 sections following the preamble constitute the body. The rights defined there should always be taken as instruments to achieve that ideal.

We should also recognize that it is the ideal only which has permanence. The regulations and rights that deal with particular situations may change from time to time.

We also hope that we shall be able to avoid the trap of rigid fulfillment of the regulations of the body with little regard to the spirit.

The demand for defining these human rights of the citizens of Ontario arose because of suppression of these rights by the majority groups. The registration of some 15,000 cases of discrimination with the Ontario Human Rights Commission is only an indicator of the existence of the problem. The figure might have been much higher had the prospective complainants not been disillusioned with the OHRC because of delay and cost in the delivery of justice.

Forty per cent of those complaints are about racial discrimination. The prevalent problem is grave and no attempt is made to measure its extent. It comes to the attention of the public only when it surfaces in a very ugly manner.

In this connection we would like to bring to the notice of this committee a recently completed study which is an attempt to measure the extent of the racial prejudice prevailing in our school system. This was the work done by Dr. M. A. Ijaz for a doctoral thesis at the University of Toronto. Dr. Ijaz has

summarized his findings in a 45-minute audio-visual presentation which we showed at our annual general meeting of the Ontario Advisory Council on Multiculturalism and Citizenship--of which I am a member--on May 23, 1981.

Notes of this presentation are enclosed in these green sheets. A glance at the results might alarm you as to the kind of adults in the making in our schools. We recommend that this committee invite Dr. Ijaz to present to you the results of his findings.

I will briefly take you through these green sheets. He had several questions, such as, "Would let them visit the country," "Would let them live in the country," "Would let them attend the same school," "Would let them live in the same neighbourhood," "Would let them live next door," "Would let them play at their home," "Would let them come to a party at their house," "Would have them as their best friends," and "Would be willing to marry them." You can see the prejudice against black Canadians, Indian Canadians and Pakistani Canadians.

You might find the same thing in table two, which is a comparison between whites towards blacks. The point to note here is that if you look at the figures of blacks towards whites, they are suffering much less prejudice.

On page seven, after a comprehensive program was introduced in the same school, you will see that these percentages change considerably. This gives you an idea of the need for starting such programs in the school as well as at the community level.

Back to page three of my presentation. We wholeheartedly welcome the revisions and extensions included in Bill 7. We are grateful to the minister and his staff for including a number of requests and recommendations from various quarters in the bill. It is commendable. The minister and his ministry deserve to be proud of it.

But the most important and most desirable recommendation is yet to be included. This pertains to the strengthening of the human rights commission and speedy delivery of justice.

In section 29(1), the person should be allowed to file the complaint, either with the commission or with a court of law. We know for a fact that many individuals have suffered and are going to suffer because of the lack of this provision.

The commission has lost the confidence of a lot of the depressed communities because of delays. For example, when a complaint is filed, it is first investigated by a human rights officer and attempts are made for reconciliation. If he fails in reconciling the parties he brings the case to the commission, which comprises part-time members. Of course, the case is heard at their next meeting.

If they decide, they then ask the minister to appoint a board of inquiry. This again takes several weeks, followed by weeks of investigation.

Furthermore, as of last week, if a judgement is passed by this board of inquiry, the status of the judgement can be challenged in view of the decision handed down by the Supreme Court in the case of landlords and tenants.

There are several cases in the human rights commission that dragged on for many years. How can we expect, say, a young black Jamaican who has a complaint of being discriminated against in a job carrying an emolument of \$4 or \$5 an hour to endure this long delay?

We submit that justice should be free and speedy. If justice begins to cost or becomes costly, one of the vital rights of a citizen is violated. Also, justice delayed is justice denied.

8:20 p.m.

Mr. Chairman: Thank you very much, Mr. Qaadri. Are there any questions?

Mr. Renwick: Probably not so much a question as a comment to Mr. Qaadri.

One of the difficulties we have with the bill before us is that it does not touch on the question of discrimination within the school system, either discrimination against the student by the teacher or discrimination amongst the students, simply because there is an arbitrary definition of age which excludes anyone under the age of 18. I stand to be corrected.

There is a lack of definition of the word "person" in the statute. It is a gap in the statute that we are going to have to cope with. I know we will be receiving presentations in connection with that from the organization known as Justice for Children, but I did not want you to be under any misapprehension--that at the present time there is no protection for children within school systems against discrimination by virtue of this act.

Even if one looks at the functions of the commission, the one which refers to programs of education, it does not touch on this problem because it is limited to infringing rights under the act.

I do not pretend that my comment is definitive, but it is certainly one of the major problems we are going to have to deal with. I thought you would be interested, at least, in my view of it.

Mr. Qaadri: We just wanted to bring to your kind notice that these are the kind of adults you are going to get in a couple of year's time. I think it is very important that we should do something about it, too. In general, this is one of the usual problems we have been facing with the Ontario Human Rights Commission. Whenever a problem arises, the responsibilities are divided or assigned to various ministries in such a way that one ministry will not touch the assignment of another ministry and the whole problem is lost.

Here is one example: that since this bill does not take care of education we should not consider the educational aspect, knowing full well that in a few years' time it will be those very students who will be forming the citizenship of our province.

Mr. Chairman: I am not sure whether it is beyond the mandate of this committee to make a recommendation to the Minister of Education (Miss Stephenson) as a result of the study of this act. Though Mr. Renwick has pointed out that it may not be covered in this act, I am not so sure what you are suggesting to us has to be covered in the act. You are indicating a direction--and I stand to be corrected in my inexperience--but perhaps it is within the mandate of this committee to make such a recommendation.

Mr. Renwick: Mr. Chairman, perhaps Mr. Brandt would like to comment on that.

Mr. Brandt: The point you made earlier that the bill incorporates the ages 18 to 65 is quite correct. It was not intended to cover the school-aged children, quite obviously from the intent of the bill. I do not know whether some recommendation could be made to the Ministry of Education, or where it will evolve from this point, but the earlier bill did not incorporate an age group of school children either.

Would you like to make any other comments?

Mr. Renwick: I think you could ask the minister if he would seriously consider looking at the definition of person, which, of course, takes a step back. You have to go from the act back to the Interpretation Act, back to the common law. But I have a funny feeling that it does not include a person under the age of majority. Therefore any of these clauses that protect against discrimination by reason of race or ethnic origin appear, for reasons that escape me, to exclude children from protection against discrimination.

I know the simplest way is to exclude them. But the fundamental problem of whether or not a child in a school who senses some sort of conscious or unconscious discrimination from the teacher would not have some right under this, not necessarily against discrimination limited to the school but discrimination in a number of ways. It may be discrimination in connection with some service which that child, as such, is entitled to receive, apart altogether from education.

I think it is a profound problem we are going to have to face up to, argue out and make a decision about. That is why I am very happy that Mr. Qaadri has raised directly and specifically that question of racial discrimination in the school system.

Mr. Stokes: Mr. Chairman, there is nothing that precludes the committee from bringing that to the minister's attention by a majority vote and recommending, when we report the bill back, that this be taken into consideration.

Mr. Chairman: I suppose that was my comment. I presume we can recommend anything we want. Perhaps that was Mr. Qaadri's intent on the educational side.

Mr. Sweeney: As Mr. Renwick has already pointed out, it does not deal specifically with the bill we have before us. However, I refer to table four, in the green pages, where you show clear changes in pre-evaluation and post-evaluation of students' attitudes.

The Ministry of Education has gone on record in some of their curriculum guidelines to identify some of the new texts, programs and resource books which do not have the same racial biases built into them as are in some of the older ones. Yet, it has also been brought to our attention by some school boards that they are unable to afford these new, nonbiased books. What has been your experience with respect to such texts and resource books in the schools?

Mr. Qaadri: I do not have the figures available with me, but offhand I would say that the attempts have been very meagre. Much can be done in this way.

This particular program, if I may say so, does not refer to the change of books, only that it was an affirmative action kind of program to bring children together with the children of the other communities to learn about their culture. It was this attempt which changed this racial attitude. Actually, it was a program where people were introduced to the music of the various cultures and to their art. It is that kind of program that helps.

This sort of program should be used as an example, because the same attitude is prevalent in people who are past the high school stage and are in university or in business. No study has been done of those people. These children are going to be adults in a few years' time. If they are getting this kind of education, what kind of education have the adults already had? This is the point I wanted to make.

Mr. Lane: Sir, I listened to you reading your presentation and listened to your remarks. I assume you are reasonably satisfied with what the bill now contains. Looking at the very last sentence in the last paragraph, it says "justice delayed is justice denied." You are telling us to get on with it, approve it and have it put into law.

8:30 p.m.

Mr. Qaadri: No, sir.

Mr. Sweeney: You are putting words in his mouth, Mr. Lane.

Mr. Qaadri: The comment that justice delayed is justice denied is meant to refer to how long it takes for a complainant to the Ontario Human Rights Commission to get his problem solved. I do not think anybody can get anything done in less time than about four or five months at the least.

I just gave the example of a young black Jamaican who is complaining about discrimination in his job, the sort that pays \$4 or \$5 an hour. He has to move on to another job. He cannot get

justice done in time to be able to benefit from it. He becomes disgusted and goes away to look for another job. It is that kind of thing that we are referring to.

If you look at the report of the Ontario Human Rights Commission, you will see that many cases drag on for one, two, three, four and even five years. If we could remove that kind of thing, we would really be accomplishing something.

Mr. Lane: You are saying that would be a step in the right direction.

Mr. Qaadri: More or less.

Ms. Copps: This may touch a little on the point about the programs in the school. On page two, you mention that of the number of complaints presently entertained by the human rights commission, about 40 per cent are of racial origin, and that no attempt is made to measure the extent of this.

There has been some suggestion that perhaps the human rights commission should be given powers to investigate not only the negative aspects, but also positive work in the community--something like the Toronto Star did recently in the housing field. Are you in favour of that idea? Secondly, how do you think it could be carried out in terms of the proposed amendments?

Mr. Qaadri: If you look at section 26(c) on page nine of the bill itself you will find that the Ontario Human Rights Commission is empowered to recommend the introduction and implementation of a special plan and so on. The power given to the Ontario Human Rights Commission is only to make the recommendation. There is no power given to the human rights commission that could compel a company to institute those recommendations. It is those kinds of powers that we are looking for.

Ms. Copps: Supposing we were to give the human rights commission power to adjudge whether school programs are promoting nondiscrimination. Do you have any formal idea how that could be incorporated into the act?

Mr. Qaadri: The way to start is simple. First you define the problem, if the problem exists. I submit that perhaps the study which is shown in the green pages is the only one which has been researched. I do not think the human rights commission has any research department per se and that is what we are looking for. The human rights commission should itself have a division to carry out this kind of research in schools, in factories, in government, in business and in industry.

Ms. Copps: You would be looking for a subcommittee within the human rights commission which would do positive anti-discrimination work studies and perhaps work in the community?

Mr. Qaadri: Right, and lately, madam, they have already started some programs. I was invited to one of the multireligious

services they have started recently. It is really doing some good for the community at large.

Ms. Fish: This is just for clarification, primarily, on Mr. Stokes' suggestion following up yours about the possibility of making a recommendation, or referring some materials to the Minister of Education, quite apart from any other considerations respecting the bill.

Would it be possible to have the clerk make a note of that so that when it comes time to be considering the full nature and substance of its report, the committee might be able to revert to the possibility of referring this brief to the Minister of Education, particularly as it relates to the possibility of programs in the schools?

Mr. Chairman: Yes.

Mr. Renwick: I have two things. First of all, my earlier comment was directed to welcoming the fact that you had raised, front and centre, the question of racial discrimination in the schools and its effect on children, Mr. Qaadri. I think that is extremely important.

I would be very interested in seeing the audio-visual presentation of Dr. Ijaz, which is referred to in this submission, Mr. Chairman. It need not be done when the committee is conducting its formal hearings, but it may be possible for the clerk of the committee to arrange some convenient occasion with Dr. Ijaz so that members of the committee and of the assembly could have the opportunity to view it.

Mr. Qaadri: If I may say, sir, any time will be convenient. It is ready and I assure you this will be time well spent. It would be very useful to see that report. It would make some of you cry, it is so moving.

Mr. Renwick: Do you see any problem in doing that, Mr. Chairman?

Mr. Chairman: Is it your intention that it be scheduled as part of the hearings? Perhaps we could arrange for the clerk to make the film available so all members could see it.

Mr. Renwick: I would think at some time when all the members of the assembly could be notified that it was going to be shown, in case other members would be interested. It takes about 45 minutes. We could perhaps have it some evening before the committee commences its evening session, or perhaps some morning--whenever it could be conveniently arranged.

Mr. Chairman: Leave it with the chair and the clerk will work it out.

Mr. Eakins: With reference to section 29(1), you say a person should be allowed to file a complaint either with the commission or with a court of law. Do you place the same emphasis on proceeding to a court of law as you do on reconciliation? Or do

you prefer reconciliation over going to a court of law? You mentioned both.

Mr. Qaadri: The reason I mentioned them both is that there are certain cases which are clear-cut court cases, and there would not be the possibility of any kind of reconciliation. If a complainant feels strongly that he is being discriminated against, he should have recourse to a court of law.

What has happened in many cases which have been brought to my notice is that a complainant went to file a complaint in a court of law and was denied. He was told this was not business they could handle and he was told to go to the human rights commission. The human rights commission went through lengthy proceedings and ultimately it was found that the matter had to go to a court of law. This unnecessarily delayed the delivery of justice.

Mr. Eakins: Do you not think going immediately to a court of law, rather than trying to resolve it in another way, might inflame the situation?

Mr. Qaadri: I agree. I most definitely feel no attempt should be spared in attempting reconciliation. At the same time, the complainant must have recourse to the court of law if he or she feels strongly enough about it.

Mr. Eakins: You mention the registration of some 15,000 cases of discrimination in the Ontario Human Rights Commission. Do you have any figures or percentages to show how many of those were legitimate complaints? I am speaking from my experience on the Ombudsman committee, where I found that while the case load looks very big, many of the complaints really did not fall into the category which required investigation. Of those 15,000, how many would be legitimate complaints?

Mr. Qaadri: I do not have the exact figures, but these figures are public information and are available from the annual report of the human rights commission.

Mr. Eakins: I thought that perhaps you might have them here as a service to the committee.

Mr. Qaadri: I do not have them with me here but quite a few is the answer, if you are looking for that qualitative answer.

8:40 p.m.

Mr. Eakins: I am just asking. You suggest that quite a number of the staff are part-time and you are suggesting that there should be a much larger staff in the human rights commission.

Mr. Qaadri: All the commissioners are part-time. They have their own jobs and meet once a month or something like that.

Mr. Eakins: What practical solutions would you recommend towards greater friendship and understanding amongst the people with the various backgrounds who make up the picture of Ontario?

Rather than concentrating on a complaint and going to court or going to the commission, what would you suggest might be done in Ontario to create a better climate?

Mr. Qaadri: I do not want to sound like a preacher, but I am a Muslim and we seek our guidance from our holy book. I quote here the last line of the verse of the Koran that I have given to you, "so that you may know each other." This is the key, the word "know."

Perhaps I may illustrate my comment to you that all of us are different, no two of us are the same. We are different and Allah in his great wisdom has made us different, and the reason he has made us is to know each other. Knowing is the first step to create compassion. I will give you a concrete example.

If you recall, last summer there was an air accident in Chicago where 27 lives were lost. It was very strange that none of our mosques, few of our churches and none of our synagogues carried any kind of condolence for the people who lost their lives. What does this tell us? Does it tell to us that we, the Ontario citizens, are not compassionate people? Certainly not. We are very compassionate people. We have even guaranteed the rights not only of human beings but of animals. There are agencies, and if you do not feed your horse or cat or dog properly you can get into trouble.

Our society is very compassionate. We have even guaranteed the rights of cats and dogs and horses. Why was it that we were not sorry about those 270 lives lost in that crash? The answer to that is that perhaps we did not know them. Had we known any one of them, we would have gone to his home and paid our condolences and perhaps we would have attended the funeral too.

It just happened a week later I happened to go to Chicago and, as usual, I met people from the Muslim community there. I found that among those 270 unfortunate people was a family of four who had belonged to the Muslim community of Chicago and there was a big commotion in the entire community because they had lost four people whom they knew. This is the key word.

This is exactly what Dr. Ijaz has done. If we have to create some kind of love amongst ourselves, the first step is that we should know each other.

In this program at the Scarborough schools they brought some people from India who started speaking about India--what their music is, how they celebrate their festivals, how they eat, what are the special things they eat, how you can eat the pure metallic silver covering your dessert, the certain things that you really come to know when you find out about other cultures. Once this program was done, people came to know that these Indians also might be eating a few more spices, but there are more or less the same kind of people and they are not basically very much different.

This is the kind of thing we have to establish in the city of Toronto and in Ontario. We have a couple of other organizations

like the Islam Association. We are promoting a program which we call, "Families meet families." In the Ontario Advisory Council on Multiculturalism and Citizenship we have proposed a program, "getting to know you." This is a program where a central office brings certain families together. You have to be a little careful when bringing families together. You need not bring a taxi driver to meet a medical doctor of the other community. If you can find a medical doctor from one community, let him meet a medical doctor from the other community, and in this way they come to know each of them. Our experience has shown in the past year that it has really worked wonders.

That is a long answer to your question, but that is where the key lies.

Mr. Eakins: I appreciate that.

Mr. Boudria: Mr. Chairman, I am not, of course, a member of this committee. Nevertheless, I wanted to come here tonight because I knew I would be very interested in hearing what the people who are here tonight would have to say.

I have a question for the gentleman which relates to the paragraph in which he described the delays we have right now. He went on to all the different steps we have to go through, taking weeks and months, and all this type of thing. I am wondering if your group has addressed any kind of way in which these steps could be improved, all these delays that you refer to right now with the human rights commission. You say that the steps are very lengthy and you welcome this bill. In your last statement you say that justice delayed is justice denied.

Of course, I do not think, as Mr. Lane says, that this means a delay in the passage of this bill, but rather a delay in the way the court proceedings and the hearings and so on are conducted right now and will still be conducted afterwards, for that matter. This will not really solve the problem of justice delayed is justice denied. Those steps will, of course, remain essentially the same. I would like to get your feelings on how these things could be changed.

Mr. Qaadri: A number of steps can be taken. For instance, there is no need for the appointment of a new board of inquiry for a new complaint. We already have so many complaints pending that there can be a permanent board of inquiry sitting in the Ontario Human Rights Commission. I see no reason why this should not be done. Perhaps we can get some judges to act on there and let them hold a court. According to the case load in the human rights commission, I think it will be busy for the next couple of years, full-time.

This is not done. Every time a complaint is crystallized as being worthy of going to the board of inquiry, the commission sends a request to the minister. I know the minister is very efficient, but let us admit that he is a human being and has some other things to look after. It does take a long time for him to appoint a board of inquiry; it might take him a few weeks.

Why is it that we could not have a board of inquiry permanently sitting in the human rights commission? There are in Toronto, I understand, less than 10 human rights officers and there is quite a load. Perhaps, by simple arithmetic, you will find it will take several years for those very hard-working, dedicated human rights officers to dispose of the load of cases. Perhaps some more officers will be appointed and some of the steps can be shortened, those kinds of things.

Mr. Sweeney: Is there any evidence within your community that the delay in processing a complaint contributes towards more racially biased events? In other words, people who would commit a racially biased action and who know there is such a long-time delay would not in any way be encouraged to do otherwise, whereas they may if there was fairly rapid settlement of the problem. Is there any evidence of that at all?

8:50 p.m.

Mr. Qaadri: I shall only give the qualitative evidence; I cannot give you specific evidence. For that you should go to the human rights commission. The qualitative evidence is that people are really very much disgusted with the delays at the human rights commission. They are frustrated.

Mr. Sweeney: Are you telling me that some of your own people--and I do not want to put words in your mouth; please correct me if I am wrong--have a sense that because it takes so long to deal with their complaints, more problems come as a result of that? Is that valid?

Mr. Qaadri: My answer will be in the affirmative.

Mr. Brandt: If I could respond at that point, the indication I have is that that program has been enriched recently. More funding has been made available for the purposes of speeding up the process. The staff is better trained now and they are going through the process of improving on that aspect of it.

So the resources are there perhaps not to bring about a perfect situation, but to improve on a situation, which really is not part of this particular act in the sense that the problem occurred and has been occurring for the past number of years. I think you will see some improvement as a result of the identification of the problems.

One other problem I should mention is that the types of cases coming before the human rights commission are somewhat more complex and sophisticated than they have been in the past. The complexity of the cases is also leading, in part because the staff has not had these cases before, to some delays that hopefully will be overcome with the passage of time.

I hope that response is, in part, acceptable. We are not happy with the delays either.

Mr. Qaadri: I agree with you, sir.

Mr. Sweeney: The point that is coming over very clearly here is that even if we make these kinds of changes, if there is not going to be a level of enforcement, nothing will change. That is the key I hear coming out.

Ms. Copps: Can I ask one question while we are on it? What do you think of the changes that they have proposed with respect to the board of inquiry. In other words, instead of being appointed by the minister, it will now be called by the commission?

Mr. Qaadri: It is still being appointed by the minister.

Ms. Copps: But in the past there was discretionary ministerial power to call a board of inquiry or not; now the discretion is going to lie with the commission rather than with the minister.

Mr. Qaadri: It certainly is an improvement, but I had full faith in the minister.

Mr. Chairman: The minister will be happy to hear you say that (inaudible) as opposed to Mr. Riddell.

Interjection: Put that down, Mr. Brandt.

Mr. Brandt: I made a note of that right away. There are some things I write down very quickly.

Mr. J. M. Johnson: I would like to ask a few questions. Quite frankly, I am very hesitant to ask questions because I feel we are dealing with a bill that is very delicate to say the least. The questions we ask could be misconstrued and it would appear as if a member could be bigoted or narrow-minded or whatever you want to call him.

On Tuesday night we heard some descriptions of what some people felt about some members of this committee. It bothers me that I feel as a member of this committee I should have to offer this apology and yet I feel I do have to. Having said that, I would like to ask you a few questions and I hope that you accept them in the spirit they are asked.

Mr. Qaadri: I will, sir.

Mr. J. M. Johnson: A few minutes ago the problem of loss of confidence because of the delays involved was mentioned. I want you to understand that my question is not for any reason except for clarification. Is there any justification in thinking that the delays might be construed as such because of a misunderstanding of the differing judicial processes of countries; that possibly your people or the people you represent who are concerned about the delays are from a country which deals with matters in a quicker fashion, that is, you have a process of justice that is different from ours? I do not mean to create any problem. Is that something you have considered?

Mr. Qaadri: Well, sir, I think within the judicial system of this part of the world, there could be some expeditious way. That is what we are looking for.

Mr. J. M. Johnson: I think back a few weeks or months ago. I remember reading an article in the paper about something that happened in a Muslim country to some people who were accused of having a different sexual orientation than average and the justice they faced. Do you know what I am saying?

Mr. Qaadri: Yes, more or less.

Mr. J. M. Johnson: And that is a different type of system than we have here.

Possibly there is a bit of carryover. We look at some things a little differently and yet maybe we are more cautious in other ways. I am not sure it is the best way. Maybe the way you dispatch some problems in Moslem countries is for the best. I am not criticizing that. But, certainly, I do not think it would meet with the approval of this committee or at least some members of the committee.

Is that part of the reason why there is the delay, that our system of justice works in a way that is different from the way people who are criticizing it feel it should?

Mr. Qaadri: No, sir, that is not the reason. Again, I submit that within the judicial system, within the system that we are used to, things could be expedited. There are certain steps included in the delivery of justice that could be eliminated. These are the things we are looking for.

Mr. J. M. Johnson: As I mentioned earlier, we are dealing with delicate subjects and I will pursue one more, one step.

We were told on Tuesday night about our lack of concern for the problem of sexual orientation. As a member of Islam Canada, could I ask your opinion? Are we remiss in what we are doing in Ontario?

Mr. Qaadri: If I may say without antagonizing anybody, this is where we are very clear in what is permissible. We have the book and the book dictates what is to be done and what is not to be done. In that case, I must tell you that the thing is absolutely out. If it had been in a Muslim court or Muslim country or Islamic country hearing, perhaps those kinds of perverts would not even have been allowed to air their grievances, if they have any grievances.

We call them diseased persons. As I told you, we have declared them to be our brothers and sisters and cousins, but our brothers and sisters and cousins could be diseased persons too. As to what to do with a diseased cousin, we know that perhaps we should try to contain the disease. If the disease happened to be

contagious, perhaps they have to be kept separate, things like that. We are very clear on that. Without any hesitation, I would go on record that these things are out.

I really admire the minister and the government of Ontario for having the guts to keep those two words out of this bill and keep the sanctity of this bill intact. I really admire it and I appreciate it.

Mr. J. M. Johnson: You have certainly delved into the problem we have. We heard something Tuesday night and we hear something Thursday night. These things are completely at opposite ends of the pole. It leaves this committee in a quandary as to how we are going to resolve some of the problems we hear.

Ms. Copps: I have a rhetorical question in response to your last remark, Mr. Qaadri. Is it also not within the Islamic religion that you are not to eat pork or to drink?

Mr. Qaadri: Correct.

Ms. Copps: Would you, therefore, then extend the prohibition of eating pork and drinking to all citizens of Ontario?

Mr. Qaadri: If the province of Ontario accepts Islam as its guiding religion, certainly it will be done. I look for that day.

9 p.m.

Ms. Copps: I am asking you that question rhetorically because I can appreciate the parameters that you are operating with in the Islamic faith. But you can also appreciate the fact that we are living in a society with many different modes of behaviour and many different lifestyles, and that is one thing that we of the committee must learn to appreciate, not only vis-a-vis the Islamic people, but also the other subject that you just addressed.

Mr. Qaadri: There are certain things that do not require a final conclusive decision. In fact, there was a very famous incident in the life of our prophet Sallalaho Alahai Wassallam. A person wanted to ask a specific question about a specific item. This was with respect to the Haj, and if I have one or two more minutes I will tell you about that.

As you know, under our religion we are supposed to perform a pilgrimage to Mecca, provided we have the capacity to do it, can bear the expenses and look after our responsibilities here. When this injunction came, one of the companions of our prophet, S.A.W., asked, "Sir, if somebody has the capability of performing Haj or the pilgrimage every year, what should he do?"

There are some millionaires. There are some very rich people who have the means to perform Haj every year. The prophet did not reply. He repeated the question; the prophet turned his face. He repeated the question and the prophet turned his face the other

way. Later on people went to the prophet S.A.W. and asked him, "Why, sir, did you not give a specific answer?" And he said, "There are certain things for which it is better not to have a specific resolution. Keep it undecided."

If he had said, "No," he would be wrong, because if somebody wanted to perform twice, he was debarred. If he had said, "Yes," then everyone with enough money would have to go every year to Mecca. The moral of the story is that there are certain things that need not be decided specifically and accurately, and this is one of them.

We have this problem and it has been prevalent, I think, through the centuries. It is mentioned in the Bible. It is mentioned in many religious scriptures. I will not make any statement that homosexuality does not exist in Islamic countries. Sure it does, but it is kept under the lid and that is where it belongs.

Thank you.

Ms. Copps: I think that the moral of your story is very good, that some things are perhaps better left unsaid, and maybe had your presentation been restricted to the area of your concern tonight, it would have been better.

Mr. Chairman: Thank you very much, Mr. Qaadri, for the views you have made known to us tonight and your presentation to help this committee in its deliberations.

Mr. Qaadri: Thank you.

Mr. Brandt: Members of the committee, just before we get to the next presentation, there was one comment made in the last presentation that I would like to clarify with respect to the investigative staff that work for the human rights commission.

They are not part-time, just for your information. Some of the commissioners on the human rights commission are part-time. I believe all but two of them are on a part-time basis. When we are talking in terms of expediting the cases and dealing with the workload, we are dealing with full-time people, although there could be some question as to the resources that are funnelled into that particular area of activity and whether it is sufficient. But they are full-time.

Mr. Chairman: Mr. Fromm.

Mr. Fromm: Thank you very much, Mr. Chairman, ladies and gentlemen of the committee. My name is Paul Fromm. I live in Mississauga. I am an educator, a freelance journalist and a former separate school trustee who represented the central area of wards two and four of the borough of Etobicoke.

I appear before you out of a very deep concern that a number of provisions in Bill 7, An Act to revise and extend Protection of Human Rights in Ontario, will in fact curtail some of our most basic rights.

I am concerned about the inroads the proposed amendments make in our rights to freedom of speech and freedom of religious belief. Freedom of association and the freedom to use one's property as one sees fit are also severely curtailed. Most distressing to me, however, are the high-handed, sweeping enforcement powers that the bill gives to government bureaucrats, powers which in many cases exceed the normal powers accorded to our police in investigating criminal activity.

One of the most disturbing thrusts of Bill 7 is to give certain rights or immunities to certain privileged minorities. One of the most flagrant examples of this process is contained in the section of the bill that makes an employer or landlord liable for harassment on prohibited grounds carried out by his tenants or employees.

First, a look at the definition of harassment shows that the bill is casting its net very wide indeed. Harassment, according to the bill, means engaging in a course of vexatious comment or conduct. To vex is to annoy. Thus the action will be judged, not by the intention of the perpetrator, but by the reaction of the person against whom the action is directed.

We are not talking about physical abuse. That is already covered by existing laws on assault. Apparently, harassment refers to speech.

In essence, Bill 7 makes certain privileged groups immune to criticism. While I may make pejorative comments about a fellow worker being a capitalist or a trade unionist or a bird watcher or blue-eyed, I may be in jeopardy if these comments reflect on his religion, marital status or handicap.

I question, in a free society, whether we should be extending immunity to criticism to certain minority groups. The freedom of certain groups from harassment means that freedom of religious belief and expression and freedom of political expression for many other citizens fly out the window. A person whose strict Christian beliefs tell him that the only legitimate relationship between a man and a woman is one sanctioned by marriage must henceforth watch his comments about fellow workers or tenants who live common law. Similarly, an economic conservative must stifle his criticisms of fellow tenants who collect welfare. What about people whose political opinions lead them to be critical of our country's immigration policies?

In many ways this section is impractical. It will make both landlords and employers "thought police," to steal a phrase from Barbara Amiel, a role that will be both distasteful and unwelcome and a role for which they are not trained. By banning harassment of only certain groups, this section is in itself discriminatory.

The idea of making landlords and employers responsible for the expressions of their tenants or employees seems to have originated with Ontario human rights commissioner Ubale. In 1980, he made a similar proposal after an incident of racial fighting in Ontario Housing in Rexdale, part of the area I represented. The initial victims were East Indians.

In scattered racial incidents in the following weeks, however, whites were attacked by armed East Indians in the same Rexdale area, the Tandridge Court Ontario Housing complex, and also in the east end of Toronto. While Mr. Ubale was most vocal in the first incident, he was silent when the whites were being attacked. I have this background in mind when I emphasize that the freedom from harassment applies only to certain minorities.

I also point out the the Ontario Human Rights Commission has not hesitated to enshrine even the disruptive practices of minority religions as being exempt from discrimination. I refer, for instance, to an incident reported in the Ontario Human Rights Commission's Affirmation, the December 1980 issue, where a Sikh was refused employment by a taxi company that was seeking to project a clean-cut image on the part of its drivers. They asked him to shave his beard, which he refused to do for religious reasons. The article explained: "The company's practice clearly contravenes the human rights code. The desire of our Sikh population to practise its religion unhindered has come before the commission in other cases. "

What about, I ask you, a fundamentalist Christian's right to witness to his belief in the sanctity of marriage?

When this bill's predecessor, Bill 209, first hit the news, it was billed as an extension of antidiscrimination legislation to cover the handicapped. While the intention of this is laudable, the broad definition of "handicap" may cause hardship for many businesses.

For instance, would a business seeking to project a young, sexy image run afoul of this part of the bill if it refused to hire a secretary or waitress because of her plain looks? Could this discrimination, under a loose interpretation, violate the prohibition against discrimination against those with handicaps, which are defined in part as "any degree of physical malformation or disfigurement?" I do not know, but I throw that out as a consideration.

9:10 p.m.

Many of the provisions of this bill seem aimed at creating a huge human rights bureaucracy in this province. Section 21(6) permits discrimination on prohibited grounds if the discrimination is for bona fide reasons. This, however, makes the Ontario Human Rights Commission the final arbiter of employment. Surely the basic rights of property dictate that such decisions should be exercised primarily by the employer. He, not the government, must live with the economic consequences or work climate that result from these decisions.

The Ontario Human Rights Commission recently turned down a request by the chancery office of the Catholic archdiocese of Toronto for an exemption allowing it to stipulate that being a practising Catholic be a requirement for candidates for a secretarial position at the chancery office. The Ontario Human Rights Commission judgement seems arbitrary and bloody-minded. A

shared faith would seem a reasonable requirement for being part of what is essentially a religious team. In enshrining the right of nondiscrimination, are we not, in effect, limiting the right of freedom of association?

Section 10 also makes the Ontario Human Rights Commission the final arbiter of even nondiscriminatory qualifications for employment or the enjoyment of other services, "where a requirement, qualification or consideration is imposed that is not a prohibited ground of discrimination but that would result in disqualifying a group of persons who are identified in common by a prohibited ground of discrimination..." Bona fide exceptions would be considered.

I wonder whether this section might lead to some ridiculous situations, keeping in mind that the very first section of the human rights code speaks about the "right to equal treatment in enjoyment of services, goods and facilities..." not merely employment. One of the possibly ridiculous situations would be the situation of basketball or football teams.

Height requirements are understandable for basketball players. These, on the average, discriminate in favour of blacks, who tend to be tall, and against Orientals, who tend to be slight. Could such requirements come under attack in the future, as the height and weight requirements for police forces have in the recent past? I do not think it is jumping too far into the future to see that type of thing coming about, where we have the human rights commission being called upon to decide who gets on a football team.

Section 12 is one of the dangerous provisions of Bill 7. It decrees that a right under the Act "is infringed where any matter, statement or symbol is disseminated that indicates an intention to infringe the right or that advocates or incites the infringement of the right." This would seem to be an outrageous assault on freedom of speech and political thought. For instance, if an older tenant in an apartment, fed up with noisy music, exclaimed, "They should keep this younger crowd out of this building," would he not be liable to the full penalty prescribed by this bill for advocating discrimination on the basis of age? A \$25,000-fine could be his punishment.

Might it not be impossible, even for you as members of the Legislature, to discuss any changes in the human rights code in the future that would diminish any of the rights already outlined because you would, in fact, be advocating infringement of an existing right? Surely we must protect the right to establish a political position, even an unpopular or potentially discriminatory one.

Just the other day, the Canadian Association of Sociologists and Anthropologists called for the hiring of only Canadian citizens for permanent teaching jobs at Canadian universities for the period of the next five years. As this would mean discrimination, beyond what is now prescribed by law, on the basis of citizenship, which is prohibited under section 1(1), could this statement not be actionable if Bill 7 passes?

Section 12 very likely violates the freedom of speech provisions of the charter of rights that is now under consideration by the Supreme Court of Canada. I have in mind particularly part I(2) of the proposed charter.

Part I(1) affirms, "Every person has a right to equal treatment in the enjoyment of services, goods and facilities." In outright contradiction to this, section 14(1) permits discrimination to help "disadvantaged persons." Section 26(c) lists among the functions of the Ontario Human Rights Commission the recommendation of programs to encourage "the employment of members of a group or class of persons suffering from historical or chronic disadvantage."

Affirmative action is absolutely repugnant to the principle that each person should be judged on his merits. While Bill 7 would descend like a ton of bricks on someone denying employment to a member of a minority, it would permit preferential hiring of members of the same minority. Affirmative action is really reverse discrimination. It, too, has its victims, the members of the majority.

The proposition that there are historically disadvantaged minorities is meaningless and is also nonsense. There is no group in this country that was not, at some time, at a disadvantage. While Jews and immigrants from England were once discriminated against in this country, although at different historical times, both groups are now well represented in the professions. If we allow affirmative action to right historical wrongs, there will have to be affirmative action for everyone; otherwise, it is unfair and discriminatory.

The best we can attempt to do is to see that the present generation is judged according to individual merits. An implicit fallacy in much human rights reasoning is that only equal results are proof of equal treatment. It is argued, for instance, that more visible minorities should be in senior business and government positions. That they are not is no indication of discrimination. As newcomers, it is to be expected that the first generation will not move into senior management positions for a host of reasons, lack of qualifications among them.

The first generation of Jews and Italians in this province were underrepresented in business and the professions. On a numerical basis, some would argue they were overrepresented in the working class. However, and this is key to an informed historical judgement, which seems to be lacking in so many human rights discussions, their children and grandchildren, educated and qualified here in Canada, have taken their rightful positions in business and the professions.

As I have observed before, many sections of Bill 7 seem tailor-made for creating an even larger human rights bureaucracy than presently exists. The Ontario Human Rights Commission should have as its sole function the handling of complaints properly referred to it under the act. It should not initiate action, meddle in the community or propagandize. These latter functions are all envisioned under section 26(d), (g) and (h).

I would disagree with one aspect of the previous speaker's comments, when he spoke about the need to have the school system and other systems mould and change peoples' attitudes. I think the general population has had too much government trying to mould their attitudes, telling you you must be for metric, you must be for that, you must be for something else. As I see the role of government, the government should respond to the will of the people rather than trying to change the will of the people.

Even more obnoxious is section 26(f), empowering the human rights commission "to inquire into incidents of and conditions leading or tending to lead to tension or conflict based upon identification by a prohibited ground of discrimination and take appropriate action to eliminate the source of tension..." I am not a lawyer. What does this mean, "appropriate action?" Would this permit the Ontario Human Rights Commission to ban groups or publications, as certain minority groups are frequently asking the government to do? It seems carte blanche for the sort of government meddling, and costly meddling at that, which has attracted so much citizen ire.

Some of the enforcement provisions under Bill 7 read like something out of a police state manual. A person investigating a complaint may enter any place, other than one being used as a dwelling, without a warrant under section 30(3). An Ontario human rights investigator may require, again without a warrant, the production for inspection and examination of anything that is or may be relevant to the investigation.

What is to prevent this section from being used to harass political groups or individuals? What protection does an individual have for his or her personal files or records from a snooping investigator? There is no provision for challenging an order to produce anything that might be deemed relevant to an investigation. Section 30(3)(c) permits the human rights commission investigator to remove and photocopy documents. What provision is there for the safekeeping of these photostats, which may be of a sensitive nature, or in the case of a business, may be of use to a competitor?

Equally objectionable is section 30(3)(d), which empowers a Ontario Human Rights Commission investigator to "question any person...and may exclude any other person from being present at the questioning." Does this not wipe out a person's right to counsel? This provision is clearly totalitarian.

Section 30(6) states, "No person shall hinder, obstruct or interfere with a person who is investigating a complaint...or withhold from him any thing that is or may be relevant to the investigation..." Again there is no mechanism for challenging the reasonableness of demands for the production of documents. There is no provision for the protection of privacy.

A police officer, I might point out, cannot seize goods, cannot even come and question a person inside a dwelling without having convinced a justice of the peace of reasonable and probable grounds. A human rights investigator has greater powers in many ways than a police officer.

In her book Confessions, Maclean's journalist Barbara Amiel warned that human rights operatives were quickly becoming a "thought police"--her term. Indeed, an Ontario Human Rights Commission investigator would have wider powers investigating a complaint than a policeman investigating a drug case.

Both the Ontario Human Rights Commission commissioners and investigators are given immunities denied the police. They shall not "be required to give testimony in a civil suit or any proceeding as to information obtained in the course of an investigation." Thus complainants and Ontario Human Rights Commission personnel become virtually immune from slander suits that might be launched as a result of their conduct.

A major flaw in Bill 7 is the failure to stipulate any penalty for false or malicious complaints. The scope for abuse of the right to complain about discrimination is frightening. The accusation of discriminatory behaviour is damaging and hurtful. This accusation is uniquely open to visible minorities. Visible minorities may allege discrimination in a way that a member of the majority cannot.

The very threat of such allegations frequently wins them preferential, that is, discriminatory, treatment from frightened employers. Bill 7 should be amended to permit Ontario Human Rights Commission personnel to be required to testify in civil suits of libel or slander. It should also provide severe penalties for false or malicious complaints, penalties equal to those provided for discriminatory conduct.

The punitive powers granted to a board of inquiry under section 38, subsection 1(a), are far too broad. The board may direct the offending party "to do anything that, in the opinion of the board, it ought to do to achieve compliance with this act, both in respect of the complaint and in respect of future practices."

This, of course, is in addition to monetary restitution and punitive awards. This could impose a program of affirmative action on an employer. It could virtually mean a government takeover of the hiring functions of the business. There is no reference to the costs or disruption such directions might cause the company.

I might also point out that the board of inquiry, appointed by the Ontario Human Rights Commission, cannot in any way be fairly seen as an arbitrator because in most arbitration situations the two parties have rights to appoint people. In this case, the average person charged by the Ontario Human Rights Commission will have scant assurance that he has had any input into the board that will be judging him.

The right of appeal from board decisions is limited and costly. The Supreme Court of Ontario is under no obligation to hear one's appeal. Once again, there is ample scope for victimizing citizens. In my presentation I am bringing in a personal case--one that concerned me.

Barbara Amiel's book, *Confessions*, offers some frightening examples of Ontario Human Rights Commission zealots, including commissioners, attempting to influence the free press. Her editor was called about her writings by Ontario Human Rights Commission personnel.

More recently, Ontario Human Rights Commission chairman, Dorothea Crittenden, complained to the University of Toronto administration about the *Toike Oike*, the rather salty undergraduate newspaper of the Engineering Society for its allegedly racist and sexist humour. The *Toike Oike* has since been suppressed.

In none of these flagrant assaults on free speech were charges laid. None of the victims was ever charged with anything, and yet actions were taken by the Ontario Human Rights Commission to suppress freedom of thought and freedom of speech in this country.

In 1975, I was an unwilling victim of OHRC censorship. At that time I was contributing book reviews to the *Financial Post*. I did a rather unfavourable review of a book called *Bended Elbow*, which cast the Ontario Human Rights Commission in a bad light. My review was a lukewarm one to say the least. I certainly did not promote the book.

The then chairman of the Ontario Human Rights Commission visited the editor of the *Financial Post* complete with a dossier on me, composed largely of letters I had written to the editors of various Toronto papers. He alluded to political affiliations that I was alleged to have had. The result was that my reviews were dropped from the *Post*. I would never have known that any of this arm twisting and backdoor censorship was going on had I not been informed of the incident by a friend at the *Financial Post*.

I found myself, every time I made a purchase and paid the Ontario retail sales tax, helping to fund the very people who had taken away from me a source of my livelihood, all in the name of human rights, of course.

This and other incidents of the Ontario Human Rights Commission assaults on free speech are documented in Miss Amiel's book. In fact, if this bill passes as is, the Ontario Human Rights Commission will continue to be permitted to take this sort of action, of attempting to lean on and muzzle the press, to perhaps even deny people employment because of views that they have taken.

Yet the same press would not be able to deny a job to a person who had been convicted of a serious criminal charge, for instance, assault, perhaps even murder. They would not be able to discriminate on that basis, and yet the Ontario Human Rights Commission will be able to turn around and deny freedom of speech to working journalists.

My recommendations are that the Ontario Human Rights Commission's sole function be to act on complaints properly before

it; that the Ontario Human Rights Commission personnel not be prevented from testifying in civil cases; that the Ontario Human Rights Commission not be permitted to maintain files on citizens who are not the subject of a complaint and that files be open to the individuals named in them for inspection; that section 12, advocating infringement of rights, sections 14(1) and 26(c), affirmative action, and sections 2(2) and 4(2), freedom from harassment for tenants and employees, be deleted from Bill 7; that all searches or seizure of property be conducted by warrant only; that a person being questioned be permitted to have a lawyer or other adviser in attendance during questioning; and, finally, that section 10, the prohibition against indirect discrimination, be deleted from Bill 7.

Mr. J. M. Johnson: Mr. Fromm, I want to congratulate you on an excellent presentation. Of your seven recommendations I find it is hard not to agree with all of them. I do disagree with the bottom of page seven, your remarks about paying the sales tax. I think that is certainly not called for.

While I am in the humour, I would like to throw out another remark that will be misconstrued. It pertains to discrimination and the Roman Catholic church. We are trying to bring in a bill that does away with most sorts of discrimination in this province and it is extremely difficult to do so for many reasons.

I will give two examples dealing with your church, not that I am opposed to it. I am not taking a position one way or the other; I am just bringing them up. One is that a priest cannot marry and the second is that a woman cannot become a priest. If we are going to deal with all aspects of discrimination in society, I think we might as well start someplace. It is not that I am opposed to it but I simply bring out a fact for this committee in its judgement. Mr. Sweeney, if we are going to address problems in society, we should look at all problems.

Mr. Sweeney: I dare you to put the amendment in.

Mr. J. M. Johnson: I am not making any amendment; I am simply pointing out a fact so that we should all be aware that we cannot do everything we hope to do in this bill and, by trying to do so, we are going to create more problems, as Mr. Fromm points out.

As I mentioned before, I happen to agree with most of them. I will have to check them out, but I think you have a lot of good common sense in your recommendations. I throw that out, maybe as the devil's advocate, and let the thing bounce around a bit, and let some of the other people who feel that we can handle all of the problems that are facing us in Bill 7 do so by addressing a few of the questions that I raise. I am not sure that you want to answer or comment. I leave it at that, Mr. Chairman.

Mr. Chairman: Mr. Fromm, do you want to comment?

Mr. Sweeney: I would be interested in your response.

Mr. Fromm: I would agree; we cannot pass legislation to change every institution in society without making an entire botch of the thing. I think so many things that are already in the bill deny freedom of association. If somebody wishes to be a member of the church, he should abide by the rules. If you do not wish to be a member, you do not have to be. If you are a member, you may wish to associate with certain people.

Apparently, the chancery office wanted to have a Catholic team, which I think was entirely within its rights. It is just like the Orange Lodge, which should be permitted to have an Orange Lodge team, and so on. But with these types of distinctions, freedom of association is being eroded and being turned over, not even to judges but to bureaucrats.

Mr. Sweeney: Mr. Fromm, I am sure you appreciated when you put these comments together that you would not get total support from this committee on them. I must say to you, though, that you certainly highlighted the possible problems in a number of areas that, quite frankly, even I had not thought of, particularly your reference on page six to section 30(3)(d) to exclude any other person from being present at the questioning. When I first read that I did not personally interpret it to mean that one could not have counsel present.

I am wondering if there is anybody here who can say whether or not that is what it means. I did not interpret it to mean that, but I can see why Mr. Fromm could very well take that interpretation out of it.

Can anyone clarify that? It is on page six, second paragraph, of the brief.

9:30 p.m.

Mr. Brandt: And page 11 of the act, section 30(d). That has been in the act since 1974. There have been no criticisms of that particular section of the act, to the best of our knowledge. However, we admittedly have some concerns about it. You have highlighted some of the problems. We are prepared to review that section, as we are the entire act.

I suppose the reason it shows up here was it was a carryover from the earlier act and there were no problems with it. That is not to say that it should necessarily be carried and continued on to the future, but that is the position of the ministry. Certainly we are flexible on the point.

Mr. Sweeney: Mr. Fromm, can I come back to you then? Are you aware of any specific situation where the interpretation that you are putting on it--and, as I said, I can understand why that is possible--has occurred? I am not, that is why it caught my attention.

Mr. Fromm: I am not personally but I think Miss Amiel is. That is just hearsay. I am not personally, no.

Mr. Brandt: We have no case on record.

Mr. Sweeney: I think that is something the committee should look into then.

Mr. Brandt: We could doublecheck that, Mr. Sweeney, but we have no case on record of any problem.

Ms. Copps: We had a case last night of a woman who was here and said that she had been forced to answer questions while the other person was allowed to be present, and when they responded she was not allowed to be here. That was an integral part of her presentation. She was not allowed to be present at all, and they excluded any other person from being present at the questioning. The questioning of the university vis-à-vis her position was that she was not allowed to be present when the university was being interviewed about her complaint.

Mr. Chairman: I am not sure it is exactly the same. I think that is a problem in itself.

Mr. Sweeney: It all hinges on a possible problem here that, as I say, I had not been aware of.

Ms. Copps: It was Anna Dagg last night who made the presentation.

Mr. Sweeney: I think the committee said it would take a look at that as a possibility, Mr. Chairman.

Let me go down farther in the same page. There was another one that, quite frankly, had not caught my attention. That is the reference to "the investigator shall not be required to give testimony." Can you elaborate on that a little bit?

Mr. Fromm: At the time of my problems I was talking to a lawyer about possibly suing the then chairperson of the Human Rights Commission for slander. This would have been a major undertaking and exceedingly expensive. This would be the type of thing that I think any person who feels victimized by the Human Rights Commission should have within his rights to do--to sue either the commission personnel for their actions or the person who has brought in a complaint that is false or malicious or itself harassing.

Yet you would probably be unable to marshal any evidence at all if you cannot subpoena the Human Rights Commission personnel to testify in a civil case.

Mr. Sweeney: May I ask the parliamentary assistant: Are you aware of the implications of this?

Mr. Brandt: Not entirely. I will make note of it and refer it to the minister, but I am not aware of the full implications of it yet.

Mr. Sweeney: Does anyone know specifically why that is in there?

Mr. Fromm: For instance, these protections are not given to most police officers.

Mr. Sweeney: That is one of the reasons it caught my attention when you read it as well. The only point I am trying to make, Mr. Fromm, is obviously you have brought a number of areas to our attention that we definitely have to look into.

Can I go right back to the beginning of your report? I would say that right off the bat it would be one that I would have difficulty with and that is the whole question of freedom of speech. If I understand you correctly, you seem to be saying that anybody can say anything they want under the guise--and I use the word guise deliberately--under the guise of freedom of speech and there would be no prohibitions.

You seem to be suggesting unlimited freedom of speech regardless of the consequences of it. Am I misunderstanding you or do you have some limitations of your own?

Mr. Fromm: What I am advocating here is simply the present situation. I am not advocating an extension of it. Clearly, there are limits to your freedom of speech. You are limited by the laws of libel and slander and so on. Here it is based on what the victim of the remarks interprets their intention to be.

I might consider a remark that you might make about my religion as just your opinion. You may have your opinion, I have my opinion. I might interpret what this gentleman over here said as harassment if he repeated it several times. Other people are more thick skinned and say, "He has his ideas, I have mine."

I think this would permit minorities to just about prevent any member of the majority from having an opinion on anything and saying it, either in a place of employment or a place where you are a tenant. I am not advocating an increase of rights, I am simply advocating the status quo.

Mr. Sweeney: But surely, Mr. Fromm, you are suggesting that the intent of the speaker may be misunderstood or misinterpreted and therefore he should be protected. Would you not agree that it is equally true that the perception of the receiver and the sensitivity of the perception of the receiver bears equal regard?

In other words, if you are saying that we cannot take umbrage at anything anybody says because they may not have intended it in the way in which we heard it, then it devolves the other way around as well and I think that is totally unacceptable.

Mr. Fromm: That is not exactly what I mean.

Mr. Sweeney: Maybe I am misinterpreting you. That is what I hear.

Mr. Fromm: If you feel that somebody has said something that you dislike, surely the proper course of action is to talk

back to them, not drag them before the human rights commission. Now, if somebody says, "I do not like you because you are just a young punk." Surely you have a right to respond: "I am not a young punk. I don't like you because you are an old geezer."

These are both discriminatory grounds that are not perhaps quite as controversial as some others. Surely we cannot legislate that we must only speak in kind and sweet terms of one another. Surely the rough exchange of views is part of our traditions in this country. Not the right to violence, not the right to beat up somebody because you do not like them on any particular ground, but simply the right to establish your point of view.

Ms. Copps: So you can say anything you want as long as you do not beat them up?

Mr. Fromm: I do not see the problem with that. The rights to action under this legislation are given only to certain minorities. If I say I do not like you because of your political party, I could say that until the cows come home.

Ms. Copps: I could say that to you too.

Mr. Fromm: I can say that until the cows come home and you have no recourse. According to the interpretation of one federal human rights person, if I start telling blue jokes and you take umbrage at that, my employer suddenly becomes responsible for me if I am doing it on the work site. I do not see that. I think that is being just an outrageous infringement.

Mr. Sweeney: You seem to suggest--and again I do not want to put words where they may not be--although physical abuse and physical assault are unacceptable, that verbal abuse and verbal assault in the name of freedom of speech could be acceptable.

Mr. Fromm: Yes, but perhaps we are escalating it to say abuse, because this just says harassment, vexatious conduct. It does not have to be abusive, it need only be critical.

Mr. Sweeney: But that is equally in the ear of the receiver.

Mr. Fromm: Yes. When somebody is a broken record on, for example, the matter of common law marriages: "It's just scandalous today the way all these young people are just shacking up together," et cetera--

Mr. Eakins: Do not forget the older people.

Mr. Fromm: I was only dramatizing that because I think it is one of the less controversial discriminatory grounds. That in the ear of some receivers could be vexatious comment, rather than simply a person trying to establish his or her religious views.

Mr. Riddell: I think you make a good point. A good example might be a farmer going into manpower to get some help to

pick fruit and what not--something Mr. McGuigan is very familiar with--and he makes the statement that he wants offshore help because he cannot rely on the Canadians--which is true; many farmers have said that and they have to rely on offshore help.

What would happen if, let us say, there were some Canadians in that manpower centre and the farmer went in and talked to the guy and said, "I want offshore help, the Jamaicans, because they know how to pick fruit, because I cannot rely on the Canadians"?

Mr. J. M. Johnson: A \$25,000 fine.

Mr. Riddell: Could he be fined \$25,000?

You see, I share some of the same concerns that you do in connection with this point--if indeed, what you are saying is true. If you are overexaggerating it then--

9:40 p.m.

Mr. Fromm: He could be, except that that might be considered affirmative action in the aid of a visible minority. But supposing he said, "I prefer Canadians rather than offshore help," because of whatever reasons? That could be actionable to.

Mr. McGuigan: I would like a point of order, Mr. Chairman. With all respect to my colleague here I do not go in and say I want offshore workers or I want Canadian workers. I say I want someone to do the job. You can go to anybody in this offshore labour program and they will make that very clear--that you give me a person to do the job. I do not care where he is from, I will take him.

Mr. Chairman: I think we have wandered a fair bit from the original question.

Mr. Renwick: I think we have had some wild flights of fancy here. I think that Mr. Fromm's presentation has cut a pretty broad swath. What concerns me is that the odd kernel of value in it is lost because of the statements which he has made.

I do not want to try to go through the whole of the presentation in order to show the extravagant expression which has been used. I would like to turn to the first page of the brief itself, the heading, "Freedom from 'Harassment' in Employment and Rental Facilities."

Your first statement, Mr. Fromm, is that "One of the disturbing thrusts of Bill 7 is to give certain 'rights' or immunities to certain privileged minorities." You go on, "One of the most flagrant examples of this process is contained in the sections of the bill that make an employer or landlord liable for 'harassment' on prohibited grounds carried out by his tenants or employees." I would suggest if you read the section, Mr. Fromm, that is a total distortion.

Let me perhaps clarify it by asking you where in the bill do

you see the conferring of any special rights on any group or minority?

Mr. Fromm: Because only certain designated minorities can make use of this. If I make "vexatious comments" about your political affiliation on the job site endlessly, all you can do is answer me back or grin and bear it. If I make vexatious comments about your race, religion or your marital status, it is actionable. So it sets up certain classes of people who are privileged. Members of the majority do not have these privileges.

Mr. Renwick: Mr. Fromm, what are the opening words of section 4(2) dealing with harassment? What are the first two words?

Mr. Fromm: The first two words are "Every person."

Mr. Renwick: Yes, "Every person."

Mr. Fromm: But my point is that that qualification is meaningless.

Mr. Renwick: Oh. Well let me go on, I do not want to argue that particular point. I thought it had a meaning to me. I thought it meant each and every person in the province of Ontario.

Mr. Fromm: If you fit into one of those categories, yes.

Mr. Renwick: If I fit into what category?

Mr. Fromm: Every person who wishes to complain about harassment on the basis of race, ancestry, et cetera.

Mr. Renwick: The way I read it, and I generally read English in the way in which it is intended to mean, "every person" means each and every person, not one group as against another group. Do you agree with that or disagree with it?

Mr. Fromm: That does not seem to me to be the intention of this section, no.

Mr. Renwick: Let me go on to the further statement.

"One of the most flagrant examples of this process is contained in the sections of the bill that make an employer or landlord liable for 'harassment' on prohibited grounds carried out by his tenants or employees."

Now what you are clearly saying there, if I read your language correctly, is that an employer is liable under this act for harassment by one employee of another.

Mr. Fromm: Yes.

Mr. Renwick: Perhaps we should read it together, Mr. Fromm.

"Every person who is an employee has a right to freedom from harassment by the employer or his agent, or by another employee in

the work place because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, record of offences, marital status, family or handicap." Where does it say anywhere in that section that an employer is vicariously liable for any harassment carried out by one employee against another employee?

Mr. Fromm: It does not say that in that section at all. It says it further on in the act.

Mr. Renwick: Where, Mr. Fromm?

Well, perhaps when you have found it you can drop me a note.

Mr. Fromm: It does say it under the investigations and the enforcement section. I do not have it here in the note.

Mr. Renwick: As I say, Mr. Chairman, Mr. Fromm can drop me a note when he has found it.

Mr. Fromm: Part of that would be contained under 38(1) (a) and (b).

Mr. Renwick: Section 38?

Interjection: Section 38(4).

Mr. Renwick: Section 38(4).

Mr. Fromm: "Where a right is infringed and the contravention consists of harassment under subsection 2 of section 2, or subsection 2 of section 4"--that is just what we have been talking about--"and the board find that a person who is a party to the proceeding"--that would be the employer or landlord--"(a) knew or was in possession of knowledge from which he ought to have known of the infringement, and (b) had the authority by reasonably available means to penalize or prevent the conduct and failed to use it, the board may make an order requiring such person, on future occasions, (c) he knows"--et cetera--"to take whatever sanctions or steps are reasonably available to prevent the continuation." So it does make the employer or landlord liable.

Mr. Renwick: That is right. In other words, that there must be at the work place the ability of one person, not complicitly with another person, to harass an employee. That does not make him vicariously liable. It makes him liable for what he has done: "the board finds that a person who is a party to the proceeding, knew or was in possession of knowledge from which he ought to have known of the infringement"--

Mr. Fromm: So he becomes liable in the future and the board of inquiry will set up a procedure that he must follow. If he does not follow it he is in violation of the act.

Mr. Renwick: --"and had the authority by reasonably available means to penalize or prevent the conduct and failed to use it."

Mr. Fromm: Well, going on the source of these two sections, Mr. Ubale at the time suggested that any tenant who made

racial remarks should be kicked out of the building. Now whether or not a landlord has that power I do not know, I am not a lawyer. I am simply saying that that burden is now laid upon employers and landlords.

Mr. Renwick: Yes, I agree with that. The burden is laid upon him, but it is not making him liable for the acts of his employee or the acts of the fellow tenants in the building unless he is a party to it. It is a common--

Mr. Fromm: I am not a lawyer but it does seem to me that employers and landlords will end up being dragged into a fair number of complaints of this nature.

9:50 p.m.

Mr. Renwick: Could I just try one other problem that I have with your presentation? What is your fundamental objection to affirmative action programs to right the balance in this society which is dedicated to multiculturalism?

Mr. Fromm: First of all, because it will create a new class of victims, as it already has in the United States, like in the Bakke case. If you happen to be anglo-Saxon or second generation Canadian you might end up being unable to qualify for certain jobs or courses. Preference would be given to any number of designated minorities.

This has happened in the United States and the experience has been an extremely--

Mr. Renwick: You are speaking about the Bakke case.

Mr. Fromm: Pardon?

Mr. Renwick: Your concern is about the reverse discrimination principle that is involved in it.

Mr. Fromm: Yes, that is right. Also, many of these allegations are based on extremely tenuous grounds.

For instance, it would not seem to me that blacks or south Asians in this country could claim to be a group that suffer from historical discrimination. In most cases, they are very recent immigrants who have come here by their own choice and who have had the protections of the Human Rights Act, et cetera.

There isn't even the justification that there may be in the United States of some historical disadvantage because the blacks were brought as slaves to the United States originally. But my argument is really there are very few groups you could care to mention who have not at some time suffered historical disadvantage.

How far back are we going to go to right historical wrongs?

Mr. Renwick: What is that section, Mr. Fromm, the special program one?

Mr. Fromm: Section 14.

Mr. Renwick: There is 14 and then the actual provision is in the function of the commission.

Mr. Fromm: Yes, 26(c).

Mr. Renwick: "To recommend the introduction and implementation of a special plan or program to encourage the employment of members of a group or class of persons suffering from a historical or chronic disadvantage."

Do you believe there are any groups or classes of persons in Ontario suffering from "a historical or chronic disadvantage"? I take it from your presentation that you do not think there are any such groups or classes.

Mr. Fromm: I tend to think that has been overdone. I would tend to think what the existing protections of the human rights code, it would be very difficult to discriminate against a person on the basis of these prohibited grounds. So people today would be judged on their individual merits.

If you want to take it farther back and say, "He would not have been poor if way back there would not have been discrimination against his grandparents," that I think gets us into major problems. I think the intention of the existing legislation is that each person will be judged on his own merits. That is the ideal situation. I do not think the present legislation should try to fight yesterday's wars or fight yesterday's historical grievances, because in doing so there will be victims and the victims, I am afraid, are going to be native Canadians.

Interjection.

Mr. Renwick: My concern is that you feel that there is no place in this bill for that kind of program.

Mr. Fromm: No, there is not. That is correct, I do not.

Mr. Renwick: So that means you believe that there are no groups or classes of persons suffering from historical or chronic disadvantage in our society.

Mr. Fromm: I am saying that I do not think that legislated affirmative action is going to solve that problem. It is simply going to create other classes of disadvantaged people.

Mr. Renwick: All right. My last comment is that I share some of your concerns about the powers in section 30. Every time I see that there can be an entry without a warrant I get concerned about it. I think other members of the committee will share that concern.

Indeed, it is my understanding, from what the parliamentary assistant has said, that these are basically transcribed out of the old statute and have never been looked at before. I can assure you we will look at them very closely.

Mr. Chairman: We have about five more minutes and two more speakers. Ms. Fish.

Ms. Fish: In the spirit of things, I will try to be fairly brief. A couple of things off the top.

I would hope that Mr. Brandt would carry forward to the minister the concerns raised about "person in attendance." My particular focus of concern there was the concern that I thought you had picked up, Mr. Sweeney, which was that the current wording might exclude someone's solicitor from being in attendance. That, in particular, if it is susceptible to that interpretation would give me concern and should be looked at.

I would also appreciate it if likewise there could be a referral to the minister on the matter of access to files. That has come up this evening, Mr. Chairman, in Mr. Fromm's presentation and also it came up on Wednesday in Mrs. Dagg's presentation. I think there should be some understanding for the committee as to why that restriction is there so that the committee might be able to weigh and consider that. Perhaps the minister could give some thought to that.

I am mindful that in much emerging practice now in personnel areas, for example, student records and so forth, it is now common to require that where there are files, in fact, the individual named in the file should have full access to them. That is useful.

I move then to try and not cover the aspects of Mr. Fromm's brief that have been touched upon by some of the other members, but just to seek a little bit of clarification.

Through you, Mr. Chairman, to Mr. Fromm. I am looking at the first page of your brief on the matter of harassment. Under the second paragraph under "Freedom from 'Harassment,'" you speak to harassment. Under the third paragraph you say, in essence, Bill 7 makes certain privileged groups immune to criticism. My first question is would you equate harassment and criticism, as it appears to me you do in your brief?

Mr. Fromm: My concern is that the definition of harassment is so broad, because it seems to rely on the perception of the victim, that criticism could very well be considered harassment.

Ms. Fish: Could you offer suggestions to the committee of a definition of harassment that would not rely upon the perception of the person apparently harassed?

Mr. Fromm: No, I could not, because I really do not see that it could be framed in such a way that it still would not be a violation of your freedom to express your opinion about another person. I think the government would be getting into very dangerous grounds indeed if we start outlawing expression of opinion, which is essentially what this is talking about.

I brought in the matter of violence just to make it crystal clear that this section has absolutely nothing to do with physical

violence. We have read of a lot of incidents in the paper about physical violence against various minorities. This has absolutely nothing to do with this. This is zeroing in on freedom of expression.

Ms. Fish: I pursue the point because it seems to me that there are two expressions in the English language. There is the word "harassment," with certain meanings, and there is the expression "freedom of speech." I conclude that they must be different or we would be unlikely to have a word for one and a separate phrase for the other.

I am having some difficulty understanding you. It appears to me that you are suggesting that there cannot be harassment because there is freedom of speech.

Mr. Fromm: Okay. This is from memory: in the federal legislation dealing with so-called "hate" literature there are a number of defences under the act. One of the defences that might be helpful here is that this shall not refer to any attempt to communicate in decent language a view on race, religion, whatever--all these prohibited grounds. So that there would be a defence on this that you were attempting to establish in decent language your own view. That would not be harassment.

Perhaps harassment is constantly screaming at you, "You dumb broad," or whatever--constantly. That is not decent language and that is not attempting to establish a view.

10 p.m.

If I say, "I don't think you really understand this work we are working on; I really think you should be on another job," I think I am establishing in decent language my own view. If I use abusive language, then perhaps I am not. Maybe that would protect people having the right to express their sincerely held views on politics, religion, whatever.

Ms. Fish: In speaking about harassment, you did not make reference to section 6 that I could find in the brief which speaks to a particular form of harassment and ties it particularly to that undertaken through reprisal or threat of reprisal by a person in authority.

Would it be reasonable to infer that you are supportive of the notion that is contained in section 6?

Mr. Fromm: I would be worried about how the person charged would have a defence against the charge of sexual solicitation, but I think that is spelled out a little more clearly and is a little bit more specific--what sexual solicitation is--than harassment. I did not have the problems with that that I have with the harassment section, because I think that harassment could be used to suppress certain unpopular, or perhaps even popular, political and religious views.

If you choose to extend the grounds of discrimination to homosexuality, I think you could get all sorts of fundamentalist

religious groups at the snap of the fingers. Any time a person opens his mouth on that he could find himself charged if he does it at his place of employment or in the place where he is a tenant, whereas I think section 6 is a lot more specific about what is meant.

Mr. Chairman: I am sorry, Ms. Fish and Mr. Fromm. We have another presenter on tonight and if the committee is not satisfied that there has been enough time, or you have other questions and clarifications, we will have to ask Mr. Fromm to come back.

Thank you very much for your presentation.

Ms. Copps: Are we going to ask him to come back?

Mr. Chairman: If the committee so wishes and feels that you have not received enough time for clarification, then I will ask him to come back and we can discuss that after we hear from the next speaker.

Ms. Copps: While there are some out-and-out distortions in that brief there are some good points that I want to discuss.

Mr. Chairman: Mr. Barrett is here on behalf of the Canadian Association for Free Expression.

Mr. Barrett, is the time allotment, 25 minutes, satisfactory with you? Thank you very much.

Mr. Barrett: Thank you, Mr. Chairman.

I might give you a little bit of background about the Canadian Association for Free Expression.

We are a private nonprofit organization, established in July 1980 in response to what we perceived as a growing threat posed by all levels of government to individual liberty and the fundamental freedoms that are the heritage of Canadian citizens.

We are a national organization and we have a head office at 3232 Bloor Street West in Toronto. We have 800 associates and they represent six provinces from Montreal to Victoria. Our financing is entirely through donations and a subscription rate to our quarterly newsletter.

In presenting this brief we wish to make it abundantly clear that the Canadian Association for Free Expression recognizes the inherent right of every Canadian citizen to equality before the law, and we see that as the fundamental, inalienable right of every citizen in a free society.

We also recognize that with every right there is a corresponding obligation. Every citizen has a right to individual liberty, but they also have an obligation to respect the liberty of their fellow citizens; and if this obligation is violated, he forfeits his right to liberty and of course may be imprisoned by due process.

The example I am thinking of here is a situation with a tenant, who has a right under this act to access to housing, but does that not mean there is also an obligation on the part of that tenant to pay his rent, the agreed rent, on time? Does that not represent a right to the landlord, the property owner, to receive that rent on time?

If the landlord violates the right of the tenant by refusing him access to his building, does not the tenant also violate the rights of the landlord by refusing him access to his moneys that are due?

We recognize, too, that every right claimed by a citizen or a minority group entails an obligation or a duty on the part of society at large to guarantee that right.

Where the society is largely homogeneous, the rights of the citizens are simple, and entail obligations, for the most part, on the elected government. However, in a heterogeneous society, where an increasing number of minorities are recognized, not only the government is obligated, but also the majority; and when the rights of the minorities are cumulative, the effect upon the majority can become truly oppressive.

Rights are not pulled out of thin air. Every time a right is granted to some group or other, it means that an obligation is granted to some other group. It is like a scale; if you are going to give rights to a group from one side, then somebody on the other side is going to be obligated to give up some of their freedoms.

I am thinking of an example that was in today's Sun. The minister, Hon. Robert Elgie, was asked if a landlord who rents out an apartment in his own home would have the right to reject as a tenant someone who had once been found innocent, by reason of insanity, of axe-murdering his wife and kids. The answer was perhaps he would, perhaps not. "It depends on whether it reasonably interfered with that person's right to be a normal and reasonable tenant in the building and not to interfere with the quiet enjoyment of the building." But what about the quiet enjoyment of the building by the other tenants, who must now live with the knowledge that an axe-murderer is present in the building?

When you grant the right to this one tenant to occupy a unit in the building, and this tenant has that kind of background, the 30 other tenants give up some rights to quiet enjoyment of the premises. I suggest that, as soon as their lease was up, most of them would move off to find other accommodation. I know I would.

Clearly it is the responsibility of government to guarantee fundamental rights and to draft legislation to this effect. Unfortunately, government can become overzealous as a result of minority group pressures and media campaigns and end up violating the basic rights of the majority of citizens.

We believe that Bill 7, in its present form, goes well beyond what is required to guarantee basic freedoms. It borders upon the totalitarian and has no place in a free society. It

constitutes a serious threat to the democratic traditions that are the heritage of the Canadian people.

One of the most obvious shortcomings of this proposed legislation is the failure to provide a penalty for false and mischievous complaints. As it stands now, a neighbour, a business competitor or an employee could use the code to unjustly to discredit, harass or embarrass either a company or private citizen.

The commission might discover this ruse during the investigation and refuse to pursue the complaint. But this discovery may not occur until after an innocent citizen has been interrogated, has had his home or business invaded, his private papers seized and minutely examined, or his employees or neighbours questioned at length. Meanwhile, the perpetrator, at least according to this act, emerges unpunished, even if his plan is discovered. This seems unjust.

We recommend that this legislation be amended to include a fine and other assessments equal to what would happen to the perpetrator of a crime under this act, or a breach of the act; namely, a \$25,000 fine, an assessment for damages and an assessment for mental anguish where that is applicable.

Section 2 provides that, "Every person has a right to equal treatment in the occupancy of accommodation, without discrimination because of..." and one of the things is the receipt of public assistance. This puts a cruel financial burden upon the property owner who is forced to rent to welfare recipients but prevented legally from attaching the welfare cheque for rents owed. The landlord has no option but to initiate eviction procedures, which are expensive and long term, with no prospect of collecting the outstanding moneys.

Where is the protection for the rights of the property owner here? Why should the property owner, who is in reality a businessman like any other and who relies upon his tenants' rent payments as a source of income, face this financial hardship?

I think it is like a businessman selling a car to somebody. He wants to make certain that person can pay for the car and if the man has a history of bad debts he does not sell him the car, or at least he ought not to. In the case of someone who does not look as if he is going to pay his rent, why should he rent the accommodation to him?

We recommend that protection on the basis of receipt of public assistance be deleted from section 2 or that parallel legislation be enacted enabling direct payment of rents to the landlord, which would then be deducted from welfare payments before they were made to the recipient.

10:10 p.m.

Section 4(2) states that, "Every person who is an employee has a right to freedom from harassment by the employer or his agent or by another employee in the work place." According to

section 9(g): "'harassment' means engaging in a course of vexatious comment or conduct." Who decides what comment or conduct is vexatious; the victim, the human rights commission? How is one to know ahead of time what a particular individual will find vexatious? Will the government somehow publish a code of conduct to guide citizens in their relationships, what they will say to one another, what is permitted?

The definition of harassment--you were speaking about this with the earlier speaker. The Oxford International Dictionary gives as a definition "to wear out or exhaust with fatigue, care, trouble; to harry, lay waste; to trouble or vex by repeated attacks." Clearly the emphasis is upon a much stronger action than simply vexatious, bothersome. Here it looks like a calculated attempt to embarrass or to dig at someone.

We are recommending that this legislation be amended to reflect a more realistic view of what constitutes harassment.

Section 12 states: "A right under part I is infringed where any matter, statement or symbol is disseminated that indicates an intention to infringe the right or that advocates or incites the infringement of the right." According to section 9(d): "'disseminate' means to communicate or participate in the communication with another, whether directly or indirectly or with or through another, by whatever means."

The scope of this section is so broad that it even encompasses private conversations between two people, correspondence, telephone calls.

If one tenant, for example, expressed a personal opinion to another tenant that their apartment building should refuse to rent to more families on public assistance, it would be grounds for prosecution under the code even though no citizen's rights had actually been infringed. This was a private communication from one person to another. If that second person were to complain about it, or if that conversation had been overheard, the way I understand the act, the person who spoke those words would be guilty and could be fined \$25,000 for a private expression of opinion.

We feel that this entire section should be removed. It is a repressive measure that cannot be tolerated in a democratic society that values the free exchange of ideas.

Section 1 recognizes rights that are fundamental to every citizen. Section 14(1) then advocates the selective violation of those rights at the whim of the government. When affirmative action or, more aptly, reverse discrimination is employed to raise the fortunes of one group of individuals, it is always at the expense of some individuals in another group.

A white Anglo-Saxon who is unemployed and who faces foreclosure on his home is in just as much need as the member of any other ethnic minority in the same financial condition. To be refused employment simply because Anglo-Saxons as a group are not considered disadvantaged is a grave injustice to the individual.

Discrimination by one's own government is the most reprehensible and disheartening form of discrimination because the citizen is powerless.

You spoke about the Bakke case. Bakke himself may or may not have been guilty of some kind of discrimination. Obviously he was not guilty of initiating the institution of slavery in the United States, but Bakke himself was going to have his private career set back because of an affirmative action program to redress wrongs that he had absolutely nothing to do with. The punishment was upon Bakke, and I suggest to you that any affirmative action program, by definition, has to punish some other member of some minority group.

We recommend that reverse discrimination is unjust and should be recognized as such in this code. Human beings either have fundamental, inalienable rights or they have not. If they have, then discrimination by whatever name is a violation of those rights. If they have not, then the entire code and, indeed, the Ontario Human Rights Commission itself is a sham and should be abandoned.

Section 26(f) is so broad that it could be used to ban books, suppress news and outlaw legitimate organizations--I am thinking of my own--simply because some member of the "thought police" determines that they might "lead to tension or conflict."

For instance, news reports that indicated--and this might just be a perception--a significant link between a particular minority group and violent crime could lead not only to suppression of the news reports but also to the prosecution of the journalist and the newspaper itself. An academic paper that demonstrated a genetic basis for intelligence and concluded that some races were inherently more intelligent, on average, than some other races could land the authors in a great deal of trouble with the commission, whether or not the thing was valid. It could be found to be wrong for purely academic reasons, but the right of the individual to publish that report should be fundamental.

This entire section is a dangerous infringement of citizens' rights and freedom of expression and it should be removed.

Section 26(h) and section 29(2) together tend to support the growth of another multimillion-dollar government bureaucracy. At a time when citizens are reeling under the triple impact of soaring interest rates, inflation and unemployment, this proposal to increase the drain on our scarce resources is particularly cruel and insensitive.

We recommend that the commission's responsibility should begin only when a complaint has been initiated by a citizen. Further, any promotion of programs to support the commission's mandate should be on a purely self-financing basis and should in no way become an additional burden on Ontario taxpayers.

Section 27 makes it virtually impossible for a citizen falsely accused under this act, and perhaps suffering financial hardship and mental anguish because of that false accusation, to

seek redress in civil court. The accused does not get the opportunity to face his or her accuser.

Further, the commission could not be held responsible for improper or irresponsible actions during an investigation by its agents. For instance, they can pick up documents that they say may be relevant to an investigation. What does that include? Who knows at the beginning of an investigation what may be relevant? Does that include love letters?

This section should be rewritten to guarantee the rights of the accused to seek redress against both his or her accuser and the Ontario Human Rights Commission in civil court. They should not be exempt, as the previous speaker said, any more than the police department is.

Section 30 contains some of the most oppressive proposals in this legislation. Subsection 3(a) removes the public protection that derives from the obligation of government and police forces to obtain a warrant before entering private property. This is a fundamental protection of our legal and political systems. What justification does the government of Ontario have for running roughshod over our traditional rights? You mention that this has been in force since 1974; I was not aware of it, but this might be a perfect opportunity to protect citizens from that kind of excess.

Clause (d) of the same subsection is perhaps even more oppressive. Here the code provides for the formation of a board of inquiry with the power to mete out punishment. It is a cornerstone of our legal tradition that in such circumstances the citizen has a right to counsel. Yet the government of Ontario is here proposing legislation that would remove this vital protection. No abstract concept of artificial equality is worth the danger that this section poses to our basic rights and protections; that is, everybody's basic rights and protections.

We recommend that section 30(3) should be rewritten to require agents of the human rights commission to obtain a warrant before entering private premises, whether they are used for a residence or otherwise. Further, it should be a requirement of this section that any citizen questioned by agents of the human rights commission should be entitled to counsel and that all citizens be informed of this right before any questioning. That would include witnesses who were called, not necessarily just the accused in a proceeding.

A similar danger is discovered in section 36(2). The list of parties to proceedings before a commission board of inquiry does not include counsel for the accused. Again it is fundamental to our system of justice that a defendant in a legal proceeding that has the potential result of determining guilt or innocence and meting out punishment has the right to representation by counsel. Why is this right ignored under the proposed legislation?

This section should be rewritten to include provision for the right to counsel for any party to proceedings before a commission board of inquiry; again whether they be the accused or witnesses. It would be at their expense, it does not cost the government anything.

Section 38(4) forces landlords and supervisors into service as "thought police." I just mention here that I, too, interpreted that section to apply to supervisors and landlords, I think primarily on the basis of a newspaper report that was printed back when this was Bill 209 before the Legislature was dissolved. But I notice on the same page in today's Sun, page three, an article says, "Sex Code Puts Boss In Hot Seat." So the reporter at the Sun clearly perceives the same thing, that the onus will be on employers to make sure that their workers are not making life difficult for males or females when it comes to sexual harassment on the job. This is talking about the Ontario Human Rights Code. So we are all making the same mistake.

This is unfair to the individuals involved and downright dangerous to the general public. Supervisors are not trained investigators nor are they likely to have the necessary legal background to determine what conduct or comment does or does not infringe the code. Landlords are not held responsible for criminal acts that occur in their building. They are not expected to break up prostitution or gambling operations or arrest drug pushers. Why should they then be forced to interpret and enforce the Ontario Human Rights Code?

This section should be rewritten to recognize landlords and supervisors as having the same rights and responsibilities as any other private citizen--no more, no less.

Section 39 does not provide sufficient opportunity for appeal of judgements rendered by commission boards of inquiry. An appeal to the Supreme Court of Ontario is not adequate because the court does not automatically hear cases--that is my understanding--but decides on the basis of legal technicalities, and the costs of proceedings before the supreme court, as I understand it, are prohibitive and well beyond the means of the average citizen.

10:20 p.m.

We recommend that provisions be made within this legislation for the establishment of an independent review board to hear complaints against rulings by a commission board of inquiry--not by the commission themselves, for obvious reasons.

We expect some members of this committee might view our criticisms of the proposed legislation as alarmist. They might agree that some sections of the act are rather sweeping in scope and language, but they justify this on the basis that strong measures are needed to protect minority rights. Further, they might argue, we are protected from misuse of the act by the good will and responsibility of individual members of government who value individual liberty and freedom of expression as much as we do.

Our only response is to remind this committee of the lessons taught to us by history. For example, the notorious Court of the Star Chamber was established in England in 1487 and given extraordinary powers to prosecute the powerful nobles who were above normal justice. In the beginning, under Henry VII, the court

operated more or less responsibly and the people did not complain. However, years later, under James I and Charles I, the court was used to oppress the population and suppress all opposition to the crown. Parliament finally abolished the court and restored the rights of the people, but the danger of creating such powerful instruments of oppression and then relying upon the goodwill of the government not to abuse that instrument was clearly demonstrated. We would do well to remember it.

We respectfully urge this committee to reject the proposed legislation and request that it be rewritten to create a human rights code that is consistent with the legal rights, individual liberty and personal freedoms that are the cherished heritage of the people of Ontario.

Mr. Chairman: Thank you very much, Mr. Barrett. We do have a few minutes if there are any questions of clarification. Perhaps the chair has been a little lax in that the purpose of these hearings is to hear the views of the public, certainly not to question the views or to argue with the views. If you have questions of clarification, I suggest that is what the time is for. I accept some responsibility for allowing more than that to go on in the question period while we are trying to get clarification of the views.

Ms. Fish: In view of the fact that you used your discretion in foreclosing certainly some questions of clarification that I and, I believe, a member who has since left, Mr. McClellan, had of the previous speaker, and since that brief and this brief and a couple of others have come in written form, I ask as a matter of procedure if it might be possible to have such briefs that are submitted in writing circulated and made available to the committee, so that the committee might peruse them, asking the deputants then to highlight or supplement.

This would permit members of the committee who have questions of clarification to devote the time on the hearings to those questions of clarification. Might that be possible?

Mr. Chairman: Yes. We will take that under advisement. Do you have a question now?

Ms. Fish: No. In consideration of the six minutes remaining to us, I will leave my time to other members who may have questions.

Ms. Copps: I may not be as delicate as some of the other committee members here, but the general thrust of the last two speakers has been that, by somehow applying human rights to all individuals in Ontario--and my reading of the act makes no mention of beefing up minority rights or beefing up rights of "non-natives," whatever that definition is--I fail to see where the kinds of concerns you are expressing will materialize.

How can the rights of the majority be betrayed by the fact that we are providing equal rights to all people in Ontario?

Mr. Barrett: Not betrayed. But, as in the example I gave

of the landlord, the landlord has some rights to make use of his private property, his building. He makes use of the moneys that are paid to him as his livelihood.

When you make it an obligation on his part to rent to anybody, regardless of their financial situation, when that person is likely, because of his financial situation, because of the fact that he is on public assistance and because public assistance cannot be attached, aren't you violating that landlord's rights to utilize his building?

Ms. Copps: I do not want to get into a debate on public assistance. I have personally never seen a study which said that people on public assistance tended to be more overdrawn than people who have incomes of \$25,000, \$50,000 or \$100,000. Often people who are in an upper income bracket can be just as overdrawn on their budgets and just as unable to pay the rent.

The prime message I would like to speak to, even though it is not the position of this committee to debate, is that the message that is coming through is you feel that by giving rights to minorities, and specifically visible minorities and non-Caucasian minorities, you are in some way going to depreciate the rights of the majority. I just do not see where the changes in the act are going to do that.

The present act already guarantees rights for people based on religion. It already guarantees freedom from discrimination on the basis of religion. That is the present fact in our society. Has it, in fact, caused you to be aggrieved as a member of a Caucasian group?

Mr. Barrett: No, I have no personal experience. Since I have been called a racist and a fascist on occasions, when I am not a racist and I hate fascism, I probably tend more to a libertarian point of view. It really hurts when someone calls me a fascist, because that is pretty totalitarian.

The point is, what concerns me most is that years ago the right to free speech was considered inviolable. The last speaker mentioned the Toike Oike situation. I went to the University of Toronto and I remember reading the Toike Oike--when you could get it. It disappeared while the Varsity lay and rotted.

Mr. McGuigan: Did you see the issue they were talking about?

Mr. Barrett: Yes, I have seen it. I grant you that some of the things in the Toike Oike were not delicate, but no one had to read the Toike Oike. I understand the university engineering papers have traditionally been that extreme in their presentation. The point is, where does that end?

You start with the Toike Oike; then what about news reports where somebody makes mention of the fact that the Rastafarians seem to be involved in another crime wave in Toronto? Maybe the press distorts the incidents that lead to that report, but is the human rights commission then going to come along and say: "You

cannot do that. That is likely to lead to tensions. So we are going to have to ask you to stop publishing that. Stop mentioning that they are Rastafarians"?

Ms. Copps: You mentioned in your brief--and I think you are talking about a study that had been done some time ago by Jendron regarding the superiority of one race over another. How do you feel that this act is going to affect scientific research?

Mr. Barrett: The fellow's name is Jensen, I believe. If he published his report and it was perceived by the human rights commission to be likely to stir up unrest in the community, if it was going to likely reinforce perceptions on the part of different people about minority groups, it seems to me that this legislation could cause that report to be suppressed.

It says very clearly in here that "anything that tends or is likely to incite." Now, why couldn't it be perceived that way and used to suppress that report?

Ms. Copps: The intent of the proposed legislation is to stop vexatious materials such as the nature of which was presented here the other night and such as we in political life often see circulated; and that is material that is to incite to riot. It is certainly not dealing with the area of scientific research.

I do not want to dwell on it, because obviously we are not going to come to an agreement on this. I would like you to explain point two, "When the rights of the minorities are cumulative, the effect upon a majority can become truly oppressive." What is wrong with seeking a province where each person has equal opportunities?

Mr. Barrett: There is nothing wrong with that. Essentially this is a free society. Being a free society is a little bit like pregnancy; you can't be degrees of it. Either you have a free exchange of ideas in a society or you have not. If the government decides, for whatever reason, this idea cannot be promulgated because it is likely to stir up hatred and unrest, then where does that end? That is no longer a free exchange of ideas.

In the case of Jensen, whether or not you agree with his findings or whether or not his report is valid or worth anything, the man should have the right to publish it. Then, if he is going to be laughed out of academic circles, so be it. But those concerns are valid concerns and they should be aired for discussion.

Ms. Copps: Conversely, should not every person in Ontario have the right to be employed and to live in accommodation without being assaulted by that kind of vexatious, racist opinion?

Mr. Barrett: Just thinking about a question that was raised last when we talked about the difference between vexatious comments and free speech, surely there is a kind of comment that is clearly geared to incite some feeling in the other party. If I call you a name directly and I attach to that name some aspect of this act that is prohibited, versus having a conversation with

this gentleman where I discuss marital status or whether you are on public assistance. In the one case I am expressing an opinion to this gentleman; in the second case I am inciting you, I am trying to embarrass you and I am attacking you face on.

10:30 p.m.

This act would limit both of those things. Surely it must be possible to limit the one without crushing the other. I should be able to discuss immigration policies without being fined \$25,000.

Ms. Copps: What does immigration policies have to do with this act? What does the discussion of immigration policies have to do with the changes that are recommended in this act?

Mr. Barrett: Because if I discuss with a friend of mine or before a group that immigration policies in Canada are leading to unrest because we have too many blacks or too many East Indians, for whatever reason I may believe that, and I say this in front of a public group, it seems to me--

Ms. Copps: If you are inciting to riot, yes. If you are expressing an opinion, where are you going to be fined \$25,000 in this act?

Mr. Barrett: Doesn't it say that I could have that suppressed, at the very least? I could be stopped from speaking out and if I did not stop speaking out, what would then happen to me? Ultimately would I not be dragged before the commission and perhaps fined \$25,000 for violating the act if I continued to speak?

Ms. Copps: That's a maximum.

Mr. Barrett: I grant you it is a maximum. It might be \$1,000, it might be \$500. The point is I would not be entitled to stand up in a forum of people and expound my views on immigration. If they are laughable then let them laugh at them, but I should have a right in a free society to expound those views.

Ms. Copps: I can see that you have some points. I think that you are obscuring the thrust of your points because the general message that is coming out is not in very specific areas. It is generally just throw out the baby with the bathwater.

Mr. Sweeney: I note in particular, on page two, your reference to the failure to provide a penalty for false or mischievous complaints. May I ask the parliamentary assistant if he could check with counsel or with the minister whether or not that is a deliberate omission, an accidental omission--

Mr. Brandt: Where was that again, Mr. Sweeney?

Mr. Sweeney: The reference was contained in the last brief as well. Here it is on page two under the heading "analysis."

Mr. Brandt: Oh, yes.

Mr. Sweeney: "Failure to provide a penalty or

mischievous complaints." I think the last two speakers have drawn to our attention the way in which a counterabuse is possible. Whether in fact it actually happens, I do not know. But I think there has been a legitimate expression of the possibility of a counterabuse.

I would like to know whether or not that is deliberate or accidental or whether there is some obviously good reason for it. Maybe it is not enforceable, I do not know, but I think we have got to examine that particular point.

Mr. Brandt: In a letter written to Mr. John Phillips, editor-publisher of the Farm and Country newspaper, and responding to an earlier article written by Mr. Paul Fromm, who just left--he was here a few moments ago--the minister did address that very question and I can quote one paragraph to give you his position on it.

"I do not think it would be appropriate to provide a penalty for making a mischievous or false complaint. Unlike the criminal law, the main objective of human rights legislation is not to punish but to promote equality. As evidence of this, I would like to point out that the vast majority of complaints are settled by the commissioners, conciliation staff, without a finding of discrimination having to be made by a board of inquiry."

That is the minister's position which is dated March 6, 1981.

Mr. Sweeney: But if we follow that, then it would equally apply in the other direction. If you say that you do not want to impose any penalties, you want to have some conciliation, then surely that has got to work both ways. What I think the witness is telling us is that on the one hand your objections are enforced and penalized, and on the other hand, nothing happens. That, to me, just does not seem to be appropriate.

Mr. Chairman: Mr. Sweeney, when we come to that, we will have the minister address that as well.

Mr. Sweeney: It is important though, Mr. Chairman, that those kinds of contentious points being brought up by witnesses be drawn to the parliamentary assistant's attention, or the minister's, as the case may be, so that when we deal with them at least we will have something to deal with, rather than continue to go around in circles.

Mr. Brandt: I have made note of Mr. Sweeney's concerns and your concerns as well, sir.

Mr. Chairman: I agree. We have asked the minister and the minister's staff to make sure this happens. Otherwise we are going to have to deal with them at the same time and that really is not feasible.

Are there any other questions of Mr. Barrett concerning his presentation?

Mr. Renwick: I just have one question because of the lateness of the hour. My sense tells me from listening to your

brief that what you are saying is that you do not think that there should be a right to equal treatment without discrimination in Ontario

Mr. Barrett: If you are saying there ought to be a right to employment for all people, yes, I believe that is true; a right to accommodation, certainly, providing you fulfill the obligations that fall upon you as an occupant.

Mr. Renwick: Every person has a right to equal treatment in the enjoyment of services, goods and facilities without discrimination. That is the guts of that right that this bill would create.

I take it that you are in disagreement about the creation of that kind of a quality into the status of a right.

Mr. Barrett: I am not sure I understand what a right to equal treatment entails entirely. If, specifically, you mean a right to work in this country, if you are talking about a right to accommodation or a right to medical treatment, those things I can understand and those things I can agree with.

Mr. Renwick: No, this says the right to equal treatment without discrimination because of, and then lists the prohibited grounds.

Mr. Barrett: Yes, but on what basis? For instance, marital status. Does that mean I have to rent out an apartment in my home or an apartment in my triplex to a couple who are living common law if I have religious objections to that? Does that not, in some sense, infringe on my right to enjoy my property and raise my family according to my traditions and religious beliefs?

Mr. Renwick: That would be a specific exception that would appeal to you under that particular ground.

Mr. Barrett: Yes.

Mr. Renwick: Are you saying that each and every one of these items is subject to some qualification?

Mr. Barrett: I think, for instance, where there is a legitimate situation that evolves. Suppose you start a homosexual bar. You ought to be entitled to employ homosexuals in that bar.

If you start a Greek restaurant, you want to be able to have Greek waiters. What good is it to have a Greek restaurant where you are trying to create an environment of the Mediterranean and have someone from the Bronx serving the table?

In a homosexual restaurant, you want to be able to have homosexual attendants. I do not see anything wrong with that. Somehow or other you ought to be able to get special dispensation.

Mr. Renwick: So, what you are saying is that there is a further exception you want to have made in certain instances. But are you against the principle of equal treatment without discrimination?

Mr. Barrett: For certain things that I think belong to every human being, simply because they are a human being. The right to work, the right to medical treatment, the right to accommodation, the right to an education--those things I have no argument with. But I do not think everybody has a right to live anywhere they want. In my house I think I have to be able to determine who lives there.

Mr. Brandt: The act clearly spells out four units or more. So that if you are talking about a duplex or triplex, they would not come under this act and the interpretation you are putting on it. I just wanted to clarify that.

Mr. Barrett: Fine, I recognize that distinction. There is a place somewhere in this act where it says, "not limited to those goods and services normally enjoyed in public places." Maybe you could help me out as to what section that is in. I cannot quite place it.

Oh yes, I see it here. It's on the first page of the act under explanatory notes. It is note 1(a).

It says, "discrimination in the equal enjoyment of goods, services and facilities generally and not limited to those available in a place to which the public is customarily admitted."

It sounds to me like they are saying absolutely everywhere. In a public place, certainly--

Mr. Brandt: Where are you reading from again?

Mr. Barrett: I am sorry, the very first page of the act.

Mr. Renwick: Explanatory notes.

Mr. Barrett: Note 1(a).

10:40 p.m.

Mr. Renwick: I take it that when we are talking about occupation or accommodation, we are talking about a person who owns the accommodation, is offering it generally to the public. I take this to mean that every member of the public should have a right to come and apply for that occupancy without being told that he cannot have it because of any one of these reasons. Then there are exceptions further on.

So that in each of these rights we are creating we are talking about the person who is offering something and requiring that person who is offering something to accept everybody on equal terms. Where is that an infringement on people?

Mr. Barrett: For instance, in the area of public assistance. If we think in terms of a large apartment building with a couple of hundred units in it, then we think in terms of Shipp Corporation and there are no real people involved.

But what about a building that has 25 units, so that it clearly goes beyond the four-unit exemption, where a man relies on

the rent from those units to satisfy other financial obligations, to pay his own rent, to pay for his groceries? Should he not have a right to make certain that the people who rent from him will pay their bills, or else have legal access to attach their wages?

But in the case of public assistance there are no wages to attach. He cannot attach the public welfare cheque. I grant you, I have not heard any studies that indicate people on public welfare are less likely to pay their bills than any other group, but obviously they do not get rich on public assistance. It seems to me that I have read--

Ms. Copps: Maybe they spend less (inaudible)

Mr. Barrett: Perhaps, but they do not spend it on rent. Perhaps there is a tendency to spend it on something else.

You may argue that they have to have food and clothing like anyone else, but the landlord needs that money, the same as any other businessman. If I am running a printing shop I need my bills to be paid or I cannot stay in business. Now where is his protection?

Mr. Renwick: As I understand it, it does not say that you have to let a public assistance person into your apartment without requiring him to pay the first month's rent in advance and put up the last month's rent, the same as anybody else.

Mr. Barrett: But eviction proceedings can take a long time.

Mr. Renwick: That is true whether you are on public assistance or not. That is a different question, is it not?

Mr. Barrett: Not really, because in the case of someone who is working you can garnishee his wages for the money owing you. But in the case of someone on public assistance you cannot.

Mr. Renwick: I guess there is just a fundamental difference. We are saying that those who are offering these services, goods and facilities or accommodation or employment, have to treat each person equally without discriminating on these grounds. That is what this bill is saying, which I support.

Mr. Barrett: I agree with you in the sense that in a large apartment building all he should ask for is the money. Once he receives the agreed-upon rent for his premises, he should not care whether the person is black, orange or living common law or whatever. Providing, of course, he is guaranteed that those people follow the rules laid down in that building for everybody.

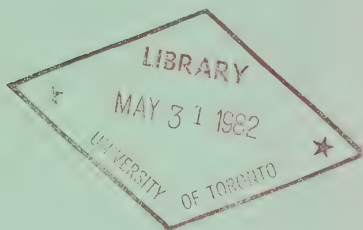
Mr. Chairman: I think the position of Mr. Barrett is clear. It is certainly not our intention to carry on the hearings until we all agree with the presenters. We are certainly here to hear their viewpoints. Thank you very much, Mr. Barrett.

It is now slightly past 10:30 p.m. We will adjourn until 8 p.m. Tuesday next, June 16.

The committee adjourned at 10:40 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

THE HUMAN RIGHTS CODE

TUESDAY, JUNE 9, 1981

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Harris, M. D. (Nipissing PC)
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McNeil, R. K. (Elgin PC)
Riddell, J. K. (Huron-Middlesex L)
Stokes, J. E. (Lake Nipigon NDP)

Substitutions:

✓ Copps, S. M. (Hamilton Centre L) for Mr. Kerrio
✓ Renwick, J. A. (Riverdale NDP) for Mr. Laughren

Also taking part:

✓ Sweeney, J. (Kitchener-Wilmot L))

Clerk: Richardson, A.

Assistant to Clerk: Van Bommel, D.

From the Ministry of Labour:

✓ Elgie, Hon. R. G., Minister

Witnesses:

✓ From the Coalition on Human Rights for Handicapped:
Foster, R.
✓ Lepofsky, D. *+ R. Foster*
Southern, J.
Theodor, Dr. L.

From the BOOST Blind Organization of Ontario with selfhelp Tactics:
Yale, M., President
McHenry, M.
Santos, D.
Yale, J.

From the Positive Parents of Ontario:

✓ Newton, S., President
✓ Pritchard, W., Member

✓ (NAME AND ADDRESS) PRIVATE CITIZEN

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday, June 9, 1981

The committee met at 8:12 p.m. in committee room No. 1.

THE HUMAN RIGHTS CODE
(continued)

Resuming consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario.

Mr. Chairman: I call the meeting to order. The clerk is passing out an update for this week. I understand we are not too certain about Thursday, June 11, whether all of these people will appear or not. That is the situation at this stage.

Several members of the committee have asked about plans for the summer. It is difficult to respond in that I am not sure whether there is any summertime in this session. I suggest that next Tuesday, June 16, we schedule some time to discuss the direction the committee will take about receiving the rest of the delegations and people who wish to appear before the committee. We should also discuss when we will proceed with the committee's own study of the bill.

Is that agreeable? By that time we should have a better idea of how many people wish to appear before us. We are looking at carrying on until the end of June, regardless of what the House does and then adjourning for July and August. We will then deal with this bill from September through to Thanksgiving. I think this is a reasonable amount of time.

Mr. Stokes: We cannot do it. We have a northern tour of legislative members right after Labour Day.

Mr. Chairman: I have heard nothing about that officially, but I have heard officially that we want to deal with this bill. If there is a northern members' tour, I am sure it will not be for all six weeks between Labour Day and Thanksgiving.

I suggest we allot some time on June 16. Perhaps we will have a better idea then as to what the House is about to do. By that time we should have an indication from all those who wish to appear before the committee.

Agreed.

Mr. Chairman: Tonight three groups or individuals will appear before us.

Clerk of the Committee: Four.

Mr. Chairman: Four? I am sorry. We are looking at approximately half an hour for each group. The first is the Coalition on Human Rights for the Handicapped--David Lepofsky and

David Baker. You have others from the group here. I do not have the names in front of me. Perhaps in your introductory remarks you could introduce them.

Mr. Southern: Good evening, Mr. Chairman, members of the committee and ladies and gentlemen. My name is John Southern. I am co-chairman of the Coalition on Human Rights for the Handicapped, along with Lee Rullman. Unfortunately, Mr. Rullman is unable to appear tonight.

The negotiating committee, a group which headed up the main negotiations on behalf of the committee, is here tonight. The members are Harry Beattie, Reg Foster, Iris Bosman--she is going to sign for us--Len Theodor, David Lepofsky and Kazumi Tsuruoka. Also assisting us are Dave Baker, Jerry Lucas and Anne Goldblatt, who helped put the brief together for us.

To open up the hearing tonight is Reg Foster.

Mr. Foster: Mr. Chairman, I am Reg Foster, with the Canadian Mental Health Association. We are members of the coalition.

The Coalition On Human Rights for the Handicapped appreciates this opportunity to publicly present its position on Bill 7. While you will hear from numerous witnesses representing diverse viewpoints and interests on this bill, we believe that tonight's presentation is of unique and special significance in the debate on human rights reform in Ontario.

Our coalition is not merely an organization concerned with rights for the handicapped. Rather, we are a federation with the endorsement of 75 groups, listed under the pink tab in your brief, including virtually every type of disability. We are the most broadly based and representative spokespersons on the issue of human rights for handicapped Ontarians.

Further, we have been closely involved in the process that led to the bill now before you. When the government chose to protect the rights of handicapped people by inclusion in the human rights code rather than by separate legislation, our coalition met with Dr. Elgie and his officials to present the viewpoints of the handicapped. These meetings stretched over a period of several months in the spring of 1980.

Since the introduction of the first version of this bill in the fall of 1980, we have made submissions relating to both matters of policy and the precise wording of the sections of the bill. Now we appear before you to make further comments on the proposed bill.

After intensive study of the bill and of the debates in the House over it, and after investigating human rights laws protecting the handicapped in Canada and in other jurisdictions, we conclude that the policy and intentions that the government is proclaiming with regard to the handicapped are well considered and highly appropriate for this International Year of Disabled Persons.

While there is urgent need for measures to help eradicate the obstacles preventing handicapped Ontarians from enjoying full and productive lives, the government's policy in the area of human rights is as good a policy as we could seek. For this, we extend our congratulations to the government and particularly to Dr. Elgie, as well as to both opposition parties that have promoted and supported this policy.

In particular, we commend the bill's broad definition of handicapped, including as it does physical handicaps, conditions of mental retardation and mental disorder and learning disabilities. We feel this spirit of inclusion will prompt all people to look beyond the handicap, whatever it may be, to see the person. We believe that the vast majority of Ontarians will support this policy in spirit.

What opposition to it might exist, such as was articulated by the Ontario Chamber of Commerce before you last week, is largely a result of misunderstanding. We must remember, however, that misunderstanding and prejudice about disabled persons are very real, as is the need for legislation such as Bill 7. To cite some examples of the difficulties facing handicapped people, I will offer some statistics from the area of employment, although the problems in other areas, such as accommodation, are also substantial.

The figures on unemployment among handicapped people are difficult to determine. When federal Minister of National Health and Welfare, the Honourable Marc Lalonde estimated the figure to be 50 per cent. A recent publication of the Department of National Health and Welfare stated the figure is 80 per cent, and COPOH, the Coalition of Provincial Organizations of the Handicapped, suggests it may be as high as 90 per cent.

I would like also to refer to a statement by federal Minister of Employment and Immigration Lloyd Axworthy--I did not have a chance to include it in this brief--in which, in speaking to a group of academics less than two weeks ago, he stated that voluntary efforts to solve the problems of employment for the handicapped, in his opinion, had not been successful.

The cost of this is enormous to the individuals and substantial to society. Ontario Ministry of Labour staff estimate that the cost of maintaining an unemployed handicapped person for a year is \$20,000, and data show that the portion of unemployed who are handicapped and receiving provincial benefits is 42.3 per cent. That appears on a pie chart which has been distributed with our brief.

The great need and our endorsement of the government's policy and intentions are not the end of the story, however. While the intention of the government, as voiced most eloquently by Dr. Elgie in the House, is progressive and beneficial, the legal language used in Bill 7 to put this policy into action is in some ways unclear, insufficient and falls short of what is required to put the government policy into law.

Our coalition's policy statement on Bill 7, which is marked by the yellow tab in our brief, enumerates 22 changes to the legal language of the bill which are needed if the government's policy is to have full force in law. Unfortunately, all the good intentions in the world will not win a single human rights court case unless legislation is well drafted.

In interpreting and applying this bill, once enacted, the courts cannot look at a single statement made by Dr. Elgie as to the bill's policy or intent. The only way they can determine the intention of the Legislature in this bill is by the legal language it contains. We, therefore, appeal to you to devote careful consideration to the bill's wording and to our proposals. Ultimately, you must make the final decisions.

Over the next few minutes we shall highlight a few of the problems with the way Bill 7 puts into action the government's policy regarding the handicapped. We have prepared a chart, which is marked by the blue tab in our brief, listing statements of government policy made in the House, showing how the bill offers to implement these policies and listing our recommendations which are aimed at more effectively putting government intention into action. We urge you to examine this and to consider our recommendations.

David Lepofsky, to my left, will now discuss the area of perhaps greatest concern to us, the area addressed in our recommendations numbered six, nine, 11, 19 and 20, covering "reasonable accommodation."

Mr. Lepofsky: Mr. Chairman, when an individual experiences a disability, he is confronted with a challenge to learn to adapt to that disability, to become competitive, to become independent, to become self-reliant. This goal can be achieved in cases of most disabilities if the individual wishes to, and is able to, obtain the appropriate amount of financial support and rehabilitation services.

Once the individual has met the challenge of his disability, has adjusted to his disability, has trained and become capable of pursuing gainful employment, he faces the real and the biggest challenge which his disability offers, that is, the challenge of public attitudes. He finds, in pursuing jobs, accommodations and goods and services, that society, through good intentions, through misunderstanding or through misconceptions, is not to prepared to accept him and to acknowledge his abilities. In short, Mr. Chairman, the biggest problem facing a disabled person is often the attitudes of others, which form a barrier to his integration.

This legislation addresses that question. Its policy, as was stated, is unquestionably good. The question is with respect to its legal language, whether it is equally good. Let us address the focal question, what is discrimination? I am going to speak in terms of employment, but my comments could apply equally to goods, services, contracts, facilities or accommodation.

8:20 p.m.

When an employer faces a handicapped individual applying for a job, what should happen, in our view? First and foremost, if the individual's disability renders him incapable of performing the job, the employer should, of course, not be compelled by law or otherwise to hire the person. This is something which has been the basis of a great deal of misunderstanding. Some have suggested that human rights for the handicapped equals forcing people to hire incompetent, unqualified handicapped people. This is not the effect of this legislation, nor is it the position of our coalition that such should be the case.

Only qualified handicapped persons should be considered for a job. Moreover, it is our view that, when a handicapped individual applies for a job, if he is qualified he should not automatically get the job. Rather, he should be considered on the same footing as any other applicant who is equally qualified. The best qualified individual should get the job, whether disabled or not.

If an individual, seeking a job, comes before an employer, we would view the employer as being required to make a two-step consideration in deciding whether that applicant is qualified to do the job. If he does not engage in this kind of thinking, we feel he is guilty of discrimination. Any other view ignores the true situation facing handicapped job applicants.

The first thing the employer should consider is the essential functions of the job--paring away the trivialities and the incidentals, what are the essential fundamental tasks associated with the job, and can this individual perform that job, notwithstanding his disability? If he cannot, he is, as we said, not qualified and should not be considered for employment. If he can, he should be considered for employment.

But the story does not end there. There is a second and equally crucial task facing the employer. In considering a handicapped applicant, he should not simply look at the job or at the work place as a status quo. Consideration should be given by the employer to whether slight modifications--low-cost or no-cost accommodations to the disability--would make that applicant capable of performing the essential functions.

For an employer to look at a handicapped job applicant and say, "You can't do the essential job functions and, therefore, I won't hire you", without first considering whether incidental minor modifications could be made so that the handicapped individual could perform the job and perform it competently is, in our view, an act of discrimination.

It is a rigid, inflexible and improper approach to the employability of handicapped individuals. The focus should be on the individual's needs, not on the rigid job structure, the arrangement of desks in the office or the lighting arrangements available to most other employees. In short, we feel an employer should be under an obligation to consider making what we refer to as "reasonable accommodations," where those accommodations would not impose an undue cost hardship on the employer.

What sort of things would constitute reasonable accommodations? When this issue is discussed, quite frequently people envision tearing down buildings, putting in ramps to make 10-storey buildings accessible if they were not before and so on, restructuring the entire Toronto transit system to accommodate a certain population. This is not what is meant by reasonable accommodation. It means low-cost or no-cost adjustments, and clearly tearing down an entire building and rebuilding it is something more than a low-cost or no-cost adaption.

Reasonable accommodation would include buying a \$200 Braille typewriter for an employee who happens to be blind working at a large corporation. Reasonable accommodation would include, when considering hiring a hearing-impaired person, installing for a few dollars a booster on the telephone in order to amplify voices so that the hearing-impaired person can use the phone effectively.

Reasonable accommodation also means propping a desk up a couple of inches so that someone who is using a wheelchair can use that desk effectively. Reasonable accommodation means, when considering hiring a blind dicta-typist, not requiring as part of the job interview process that they prove that they can read inkprint because obviously a dicta-typist does not need to read inkprint, but to listen to a dictaphone tape.

Reasonable accommodation means perhaps buying a low-cost magnifying glass for a job applicant who is going to have to do some reading in his work and who has poor vision, which can be aided by a few dollars spent this way. It can include buying or providing an overhead projector for a person with a mobility disability who wishes to teach and who cannot stand up and reach the full scope of the blackboard, but can have equal impact as a teacher by using an overhead projector.

All of these kinds of accommodations are minor by definition. All are low-cost by definition. It is the view of our coalition that major structural changes in society are an important issue for the disabled, but should be addressed through building code type of legislation. Accordingly, our proposals with respect to reasonable accommodation do not address structural discrimination. They address attitudinal discrimination, whether an employer is prepared to be flexible in his attitude, to look at the full abilities of the individual and to consider making reasonable accommodations.

What does reasonable accommodation mean in practice? An example we might cite is that Metro Toronto has adopted the policy, in considering handicapped applicants, of making reasonable accommodations and has appropriated the not insubstantial sum of, I believe, about \$1 million. This sum has basically gone unused. They have found for hiring disabled people they have had to use, I think, a figure under a few hundred dollars. So the proof is right there.

It is our view that if legislation protecting the human rights of the handicapped does not impose an obligation on employers to consider making reasonable accommodation, then an

employer can adopt a rigid stand and say: "Unless you have a magnifier, you can't do the job, and I'm not buying you the magnifier. So I don't need to consider you for this job. You are incapable of doing the job functions."

In short, employers--and this also applies to service providers, landlords and the like--will have a loophole through which they can slip and, in effect, the legislation will be substantially ineffectual in addressing the problem of discrimination.

Reasonable accommodation has been applied in other jurisdictions. I refer you to the orange tab in your brief where there is an extensive legal document outlining where it has been applied in Canada and in the US. It has been applied under US human rights legislation by way of regulation. It has been applied in the federal jurisdiction under federal human rights legislation by way of interpretive guidelines. It has been applied in Ontario under the existing human rights legislation vis-a-vis sex and religious discrimination by way of case decision. In other words, reasonable accommodation is neither a new concept nor a radical concept. It is old, proven and existing.

The question arises as to what the impact of this will be in practice. Will this cause major changes in the economy? Will this impose major cost problems? To respond to that, I am going to first make reference to two documents which are being passed around to you at this moment. One is a letter addressed to myself from human rights officials in the US who enforce legislation which embodies, expressly, the reasonable accommodation concept. Secondly, there is an article, to be passed around to you, outlining how reasonable accommodation has worked in practice from the view of the consumer.

Both documents prove the same point. Reasonable accommodation is a necessary element of human rights legislation if the legislation is going to have any effect on discrimination at all. Reasonable accommodation involves imagination and creativity, but not high costs. That is the essence of the two documents which are being passed around to you, and I ask that you consider them seriously in the context of this issue.

Finally, we address the question of what Bill 7 does on this issue. What is the government's policy? In line with our previous statements, we approve of the government's policy as stated. The government's policy is that only qualified handicapped job applicants be considered for employment. Those who are not qualified should not be compelled by legislation to be hired.

The second element of government policy, as stated in the House, is that in considering whether a handicapped person is capable of doing a job, the employer should direct his mind to the essential functions of the job and to whether the handicapped person can perform those essential functions.

The third element in the government's stated policy is that where an employer has demonstrated attitudinal discrimination, a refusal to be flexible and to look at the true abilities of the

disabled job applicant, and where the handicapped person is capable of performing the essential jobs, where he has the innate ability, then the handicapped applicant should first be able to have legal recourse to compel a remedy. As part of the remedy, the handicapped applicant should be able to have the employer make reasonable accommodations where the costs do not impose undue hardship. These are the statements that the government has made and we approve of them to the letter.

The question is whether Bill 7 implements these principles. It is our view that it does not, that its impact--no matter what its intention may be--will not have this effect. First, Bill 7 does not expressly acknowledge, in considering a handicapped applicant, that the employer must consider whether low-cost or no-cost accommodations would render him incapable of performing the essential job functions.

Second, the legal wording of the legislation is such--and in questioning we can bring this out in detail--that in our view it excludes the possibility of us going to court and arguing that reasonable accommodation is implicit in the bill. That is to say, whereas the old human rights code never acknowledged reasonable accommodation for sex discrimination situations or religion discrimination situations, case decisions have introduced this concept, and properly so. However, the wording of this bill is such that it would take away the possibility of arguing that approach under the handicapped discrimination situation. In effect, not only does this bill not give it to us expressly, it makes sure we cannot get it by implication.

Finally, what this bill offers in section 38 appears to be a very effective remedy, a remedy whereby, when discrimination occurs, accommodations can be ordered. However, section 38(2) says that where an applicant can prove discrimination, then he can get an order of reasonable accommodation. To prove discrimination when an employer refuses to make accommodation is impossible under the wording of this legislation. In effect, you cannot prove discrimination and, therefore, you will never get the remedy.

Put simply, the bill does not offer us reasonable accommodation; it takes it away. It purports to give a remedy which in practice is not available. Therefore, we ask that the loophole that exists in this bill through which employers might slip--and most likely could slip--be closed. We ask that the legislation expressly include an acknowledgement of the duty of an employer to consider making reasonable accommodations, not necessarily that they have to make them, but at least that they consider them in their thinking process.

We ask that you implement the policy of the government as stated. We offer the United States as proof that the reasonable accommodation principle can work, does work and does not impose cost hardship. Not least of all, we ask that you word the legislation in such a way--unlike Bill 7--that you do not take reasonable accommodation away, which is the effect.

My final comment will be addressed to the question of cost. Many fear that the impact of hiring the disabled, in particular if

accommodation is imposed by legislation or at least the duty to consider accommodation, will be to impose major cost problems. As I have said, this is simply not what we are looking at right now.

First, any costs that are incurred by employers are tax deductible. That means big employers are only paying 50 cents on the dollar for whatever accommodations they make, low-cost as they may be.

Second, as the documents we have distributed indicate, in the United States the vast majority of accommodations which have had to be made under a reasonable accommodation regulation have cost little or nothing. Costs for a magnifier, an overhead projector, propping up a desk two inches, certainly are not massive expenditures.

Third, we hope the legislation would expressly put an unreasonable cost limit so that in law it would state that reasonable accommodations can only be low-cost and no-cost.

Four, the government can and should create the power to make regulations so that the matter of what is undue cost or hardship can be clarified by regulation for the benefit of all.

In concluding my remarks, the position of our coalition is simple. Without reasonable accommodation, the bill vis-a-vis the handicapped will not even address the issue of discrimination in a substantial way.

I would like to ask my colleague Professor Len Theodor to make the concluding remarks for our coalition.

Dr. Theodor: I am Dr. Leonard Theodor. I represent the Multiple Sclerosis Society of Canada on the coalition. Throughout our recommendations for improvement to the legal language in Bill 7, the need for clarity and specificity is a prominent theme.

One particular area where we are concerned about clarity and precision is that of insurance. Handicapped people are persistently denied insurance coverage of all kinds or are subjected to discriminatory rate increases. Horror stories in this area abound. Insurance companies often lack any actuarial statistics to prove that handicapped people are greater insurance risks.

We agree with the stated policy of the government in this area. Where handicapped persons seeking insurance are greater risks than the norm, they should generally be charged higher premiums in line with their greater risk. This is the same principle supposedly applied by insurers to all insured persons. Evidence that this simply is not the case can be drawn directly from the case reported in the Toronto Star, May 29, 1981, a copy of which is being circulated now.

In previous legislation, which we had opposed, insurance companies were to be completely exempted from compliance with the human rights code vis-a-vis the disabled, enabling them to refuse

to insure handicapped persons. They would have charged higher premiums even though they had no evidence whatsoever that the handicap substantially increases the risk.

After we discussed this issue with Dr. Elgie, Bill 7 was prepared with a major policy shift in favour of our view. Insurance companies are no longer to be given the unjustified privilege of being the only industry exempt from human rights obligations. The legal language, however, in sections 20 and 21 does not adequately reflect this intention of the government. Stronger language is needed, as proposed in recommendations 12, 13 and 14 of our policy statement, to ensure protection.

In conclusion, we ask you to carefully consider and study our brief. We trust that this committee and all parties represented here will think over our request so that this step in the legislative process will help this bill to achieve the goals each party has approved in principle.

We are available to any of you at any time should you wish to share the expertise in this field which we have accumulated over the past two years. In addition to hearing from the coalition for handicapped people generally, we expect you will be hearing in the weeks ahead from member organizations of the coalition to inform you of the concerns of the groups concerned with specific disabilities.

Mr. Chairman: Thank you very much, Mr. Southern, Mr. Foster, Mr. Lepofsky and Dr. Theodor. We do have about 15 minutes. Are there any questions from members of the committee?

Mr. Renwick: Gentlemen, I was most interested in your presentation. It will receive a significant study by all the members of the committee; there is no question about that. There are three or four matters I would like some clarification on.

On the question of statistics with respect to employment and unemployment, people who are handicapped are faced with an obstacle and employment seems to be such a wide gyration. I recall that recently the minister made an address about this question. Even with his authority, he could not stamp on the figures the question of the extent and degree. Have you any views as to how in this committee during the summer as a short-range project we could go about getting some handle on the question of the extent and degree statistically of unemployment by reason of handicap?

Mr. Foster: We have not turned our minds to that, but certainly the coalition is an ongoing effort. If there would be an opportunity to answer that as best we could or any new information that we might be able to offer, we would be happy to bring that back to the committee at a later date.

We agree totally. With our limited resources we have not been able to. It is what you would expect, given that governments and institutions with much greater resources have not been able to pin that problem down. But we would be glad to discuss that among us and come back to you with the best that we could offer.

8:40 p.m.

Mr. Renwick: You heard what the chairman said about a suggestion as to the outline of the process of this committee. That would likely mean that we might very well hear submissions and then have a period of time before we actually move to discussion of the bill. It would be most helpful to the committee if, during that interval, we could have the benefit of your suggestions as to how we can get some handle on the question of the extent and degree of unemployment by reason of handicap in the province. We just do not have it and the gyrations are so great that it makes any estimation very suspect, other than that it must be extremely high.

Mr. Southern: I was just going to point out the fact that it is really obvious that the unemployment rate of disabled people is high. One of the only agencies with any real figures is the Canadian National Institute for the Blind. They show that there is 75 per cent of working-age blind unemployed. The blind are one of the least handicapped groups among us, I think. So I really think that is a real reflection of the high number of unemployed in Ontario and in Canada.

Mr. Renwick: I just wanted to raise that as one of the concerns and not to pursue it. But I think it is a matter that we as a committee must pursue during the course of the summer. I would hope that by the time we reconvene, if the chairman's proposal is adopted, we will have a much better sense. It may not be perfect, but at least it would be better than the extremely erratic projections which are made from time to time by people about the question.

I had an opportunity to read, and indeed reread because I was interested in it, the report of the committee of the House of Commons which dealt with handicapped questions, the report headed Obstacles. Have you any comment that you would like to make about the report generally or any grouping of the 133 recommendations in that report, many of which fall within the jurisdiction of Ontario, that impinge upon the question of rights that we have here? I am not asking you to make that statement now, but it would be a very valuable statement if you could give us your views on that report during the interval between meetings of the committee.

Mr. Lepofsky: If I can answer that briefly, to the extent that the Obstacles report addresses the question for need for comprehensive coverage for the mentally and physically handicapped, obviously it is completely consistent with what we are saying.

To the extent that that report addresses what is going on at the provincial level, there is one recommendation that it makes which is reinforced by our recommendations, that is, when discrimination in the area of services is discussed, the right to equal education should be expressly mentioned. You will see that is one of our recommendations in our policy statement. You will also see that in our policy statement we refer to the fact that Obstacles endorses this and says that the provinces should do it expressly.

With respect to the policy in Bill 7 and its intent vis-a-vis its practice on that very issue, Dr. Elgie has stated in the House that this definition of services, by removing some of the old language from the code, is broad--and we agree--and that it should encompass things like education in universities. We agree with that policy and we agree it should cover that. We regret that, unfortunately, it probably will not unless it expressly is stated in the bill, given the courts' extremely restrictive interpretation of what services are as evidenced in many cases as high as in the Supreme Court of Canada.

So our recommendation on including education as a service expressly is consistent with what the government has said it intends by this legislation, which is endorsed by Obstacles, the federal report, but which, unfortunately, we do not think this bill would do unless our amendment is accepted.

Mr. Renwick: In respect of your response to that, we will have the benefit of a submission by Justice for Children at some point in this question. Of course, the definition of age at the present time excludes any consideration of education under the bill from the point of view of prohibited grounds of discrimination. I would appreciate very much that opportunity, either because of the definition of age or because of the extremely remote definition of something called "person" under the bill.

The stepback, as US lawyers would understand, from the inclusive definition in the bill through to the Interpretation Act, through to something called the common law, as to what a person is, would lead me to believe that the whole of the educational process is excluded from any consideration under the bill. I would appreciate it if, to the extent that you have the time and the resources to do it, we could have your expression on that question as well.

I am delighted that you have raised the last point because a matter of immense concern to me is the whole question of the section dealing with the nonapplication of this code in questions of insurance in a number of areas. I do not need to go into it at great length. I simply want to use the occasion to say to the insurance industry that we expect and invite their participation in the hearings of this committee to tell us their position with respect to the surcharges or other premium extras which are charged because of handicap.

I am thinking not only of life insurance but also, of course, of automobile insurance. I think that is a question that we as a committee have an obligation to address. What our conclusion may be is not that important, as long as we address the issue.

Again I would ask you, within the limit of your time and your resources, to consider what the select committee on company law had to say on both the automobile insurance question and on the question of life insurance with respect to handicaps of one kind or another so that we could have your views during the interval on those issues.

I have gone on at some length because it is a matter of immense concern to all members of the committee, I am sure. As my last comment, I really admire the way in which you define "reasonable accommodation" on the most minimal level. I suppose it indicates very clearly that what you are really asking is simply to have the door opened and that you will face the problems once you get in. The reasonableness of your approach and your definition of reasonable accommodation appear to me to be synonymous with saying that all you want is minimal accommodation. You just want to get into the game. I admire you for that position.

I do not think the committee is that restricted in its view. I think it would be open to a somewhat more optimistic view of the capacity of the society to meet your demand for reasonable accommodation.

Mr. Sweeney: I have a question, first, to Mr. Lepofsky. You indicated you would request something to read similar to "employers must consider"--and I have got the word "consider" in quotation marks and underlined--"making reasonable accommodation." I am not sure I fully understand the way in which you are using the word "consider." In normal language context, it could mean he just has to think about it, and he could think about it for 30 seconds and dismiss it. I am sure you must be using the word "consider" in a sense different to that. Could you expand slightly?

Mr. Lepofsky: You focused on what is probably the most crucial word in "reasonable accommodation" other than perhaps the reference to cost, in the light of people's, if I can say so, "paranoia" about the cost consequences of this business. That is not my word; that is the word used by the American human rights officials to describe what existed in their country before they put it into effect.

8:50 p.m.

The reasonable accommodation proposal is not intended to be a de facto or de jure building code. It is not meant to say that all buildings must be modified tomorrow. We are not opposing the concept of physical accommodations generally; I do not think there is any anyone at this table who would oppose that. I would say we view that as a question that is not to be dealt with under the human rights code but, rather, under the building code. Certainly you will be hearing from our member groups on that at the appropriate time.

We view the question of reasonable accommodation as focusing in on what is discrimination. You can say to me that discrimination is treating identically, by coming to me, a blind individual, and saying, "I will treat you identically to everyone else. Here is a printed application form, Mr. Lepofsky. Would you fill it out, please?"

I will never get a job with you even if that application does not ask if I am blind or not, which is one of the things this code fortunately will get out of those application forms, because you will have to accommodate my disability even in the

pre-employment situation, according to this legislation. What we would like you to do as an employer is to look at me and size up my abilities, taking into account, in your own mind, what those abilities would be if you made some minor changes to accommodate my disability.

If you decide after that thinking process, after that consideration, that I cannot do the job, that even after reasonable accommodation might have been made I still could not do it, then you refuse me the job. If I dispute your view, I apply to the human rights commission and I allege that you have discriminated. Then I argue what my abilities would be in their truest sense, that is, what they would be if you made minor accommodation.

Without this legislation as we would like to see it, without your having a duty to go through that thinking process, you can look at me and say: "Mr. Lepofsky, you cannot do the essential job functions right now. I do not have to change things a bit to look at your abilities, and because you cannot do the essential functions of the job right now, section 16 of this bill says that I am not discriminating." If you look at the definition of discrimination in section 9, you will see that it is extremely narrow in its wording, so, accordingly, I will never be able to prove discrimination unless I can impose on you a duty to think about it.

Let us say you did what I just suggested. You think about it for 30 seconds and you say, "No, he cannot do it." Then what I do is file my complaint to the human rights commission alleging discrimination. Then it is up to the commission, a board of inquiry and the courts to look at my abilities in their broadest sense, in their truest, most realistic sense, that is to say, what I would be capable of if you made some slight, low-cost accommodations to my disability.

If they feel that in your 30-second consideration you have given me short shrift and been unfair, they will make a finding of discrimination. After they make a finding of discrimination, they will go on to order you, if in their discretion they prefer to do this--you will notice in section 38 that the remedy is discretionary--they may order you to make accommodation.

If you do not have to go through that thinking process, you will, virtually, never be guilty of discrimination. I will never be able to file a complaint, and it will never get to the point of discussing whether the remedy should be utilized. So you can give me short shrift, if you like, under our proposals, but I will have you before the human rights commission in about 10 minutes. Who wins or loses will depend on whether your case is valid or my case is valid. If I cannot do the job, obviously I will lose.

Mr. Sweeney: You use the phrase in the context of another phrase--the legal language of the bill. Correct me if I am misinterpreting you, but what I hear you saying is that if the word "consider" were put into the legal language of the bill, then it would follow that an opening exists for you to claim discrimination that is not possible under the current legal language of the bill.

Mr. Lepofsky: That is basically right, except for the wording change. Look in the policy statement, the yellow tab. Actually, I had hoped we could Braille it so that I could have advised you what it was and you would have had to have asked me--in the true spirit of equal treatment as the code defines it.

Mr. Sweeney: Is that what you mean by "attitudinal discrimination"?

Mr. Lepofsky: I would say so--without prejudice, of course.

If you look at recommendation six, I think it is, which refers to the definition of discrimination, it says, "Discrimination means differentiation..." It embodies the notion that in the thinking process reasonable accommodation must be taken into account. It does not say there is a duty actually to accommodate. The wording presupposes a thought process to plug the loophole in this current bill. If that wording is not there, and if you look down at our recommendation nine, which looks at the exemption clause, unless it is in there as well-- Am I correct about number nine?

Mr. Sweeney: I do not see anything about exemption. Maybe I am looking at the wrong one.

Mr. Lepofsky: It is probably section 16. Does recommendation nine deal with section 16?

Mr. Sweeney: Recommendation nine deals with section 9.

Mr. Lepofsky: Then you have to go down to number 11, dealing with section 16. You will see that the employer can refuse where, after reasonable accommodation, I would be incapable of doing the essential functions. That is the way we plug the loophole. Unless that loophole is plugged, you do not have to go through that thinking process and I will never get to court.

Mr. Sweeney: I understand. Can I come back to an earlier comment you made with respect to--I just touched on it myself--attitudinal discrimination? I am sure you will appreciate that is one of the most difficult issues for us to grapple with. As a legislator, I frankly do not know how to put that in legal language.

What did you have in mind in terms of our putting it into legal language? I know what it means as a concept, but I am not sure I know what it means with respect to my task as a legislator.

Mr. Lepofsky: The reason it was in my presentation was that it is in the context of reasonable accommodation. The reason is we perceive--and Dr. Elgie would agree with us completely on this--that there are two different kinds of discrimination. There is attitudinal discrimination in terms of one person's unwillingness to consider the true abilities of the other--and that is what human rights legislation is addressing--and

structural discrimination, such as the Toronto transit system, which has all these stairs and escalators and no ramps and is a massive problem. In essence it is discriminatory, if you think about it in the broadest term.

But it is structural, which is not addressed in this code and is not addressed in our recommendations. That is where we draw the line. Our recommendations all address having this code worded in such a way that it will truly outlaw attitudinal discrimination. If you want the legal language, it is in those proposals you have in front of you. It will address that very problem, as distinguished from the structural question, which is the business of part V of the building code.

Mr. Sweeney: I understand the context in which you are putting it. Let me come at the comment which you made with respect to the federal proposals entitled, Obstacles, and your specific reference to education as a service. The point has already been made that because of the age limit of 18 this is probably not intended to deal with elementary and secondary education, but it most certainly could deal with college and university education. You seem specifically to refer to university education.

Mr. Lepofsky: Dr. Elgie did in the House, speaking on behalf of the government when he introduced the bill for second reading. I am, basically, quoting his statement of government policy.

Mr. Sweeney: All right. Apart from university education, what else are you referring to other than, to use your own term, the structural obstacles?

Mr. Lepofsky: Do you mean what sort of discrimination are we talking about?

Mr. Sweeney: Yes, other than the structural, apart from the inability to get into the building and to move around the building once you are there.

Mr. Lepofsky: Aside from the major structural things, there are areas where minor accommodations can be made. The Americans have had a great deal of experience in this. We could bring in a truckload of regulations and cases and things dealing with this issue, for example--this happened in the States, but it was not litigated--if a blind individual wanted to become a doctor, applied to medical school and was refused because of blindness. Without addressing the question of whether a blind person can be functional in the medical profession,--it has certainly been proven in the States--without debating it, this would give a forum to litigate that.

Minor accommodations, in the context of school, would not involve tearing down buildings and putting up new buildings. It might involve such things as making a staff member available to act as a reader for a blind student taking an exam, something large universities with large staffs can easily afford to do. It is not a cost problem. That is the sort of thing.

9 p.m.

When I get back to that medical situation, a refusal to admit someone to a program on account of their disability would perhaps be the best example. From my background in blindness I know of examples and I have read of examples where a blind person will apply to a particular school and will be told, "A blind person cannot do this job; we're not admitting you."

Mr. Sweeney: Mr. Chairman, could I redirect a question to the minister please? There are two points to it. First of all, I heard Mr. Lepofsky say that in his judgement the word "services," despite the minister's comment, may not adequately cover the concept of education. I am not arguing as to who is right.

Assuming there is a matter of genuine doubt there, would the minister have any objection to specifically listing education?

Hon. Mr. Elgie: I think the first thing is that we should hear from legal people during clause by clause as to whether or not there is any doubt about it.

It is the old question. We went through it with David in the coalition--

Mr. Sweeney: I am only asking it in terms of the people who are here now.

Hon. Mr. Elgie: --and I went through it with the definition of what is a handicap--and Bernie Newman, if he was here. There is a desire of many people to be specific, but frankly--and I have said this at the coalition--that I do not think the specificity we added to the definition of handicap was necessary, but we did it simply because there seemed to be a great need to have it spelled out.

I think that those are matters we should consider when we get to clause by clause.

Mr. Lepofsky: Just so you know the authority we are coming from, I have just one case of many on the service issue, just so people are aware that this is a litigious matter. The Supreme Court of Canada has said that putting an ad in a newspaper, in essence, is not a service offered to public. They have worded it in strange wording, but they have said it none the less. Yet there is nothing that I think any law student or lawyer would say is more obviously a service than this. There are cases where the courts have come out and said services are basically restaurants and this sort of thing.

If it is desired in policy to include education, that is to say, if you agree on that policy matter and we are simply down to legal wording, we have found the following situation. Either you put education in, in which case we have it, or you do not put it in, in which case we either go to court and fight it to the

Supreme Court of Canada, spend thousands of dollars on legal fees to get what you could have given us for free and what you always wanted to give us, or we can spend thousands of dollars and go to the Supreme Court of Canada and lose, in which case we have lost our money and you never got what you intended in the first place. Logically, therefore, the choice is the same.

[Laughter]

Hon. Mr. Elgie: We will wait to see if you feel this way when you get back from Harvard.

Mr. Lepofsky: When I get back from Harvard I will be convinced because there they have reasonable accommodation in their legislation.

Mr. Sweeney: Even with the minister's legal background, I am sure he must appreciate that particular argument.

I have only one other question, Mr. Chairman, if I may, and here I must plead my ignorance. You made reference to the fact that as this legislation is at present worded you could be excluded from the possibility of claiming discrimination in the court, compared to existing legislation. You lost me there. Obviously, as I say, it indicates my lack of awareness of the distinction.

Mr. Lepofsky: Under the present code, while handicap is not included, there are two Ontario cases cited--and they are cited under the orange tab in the legal paper on reasonable accommodation--where the Ontario courts have under existing legislation acknowledged that discrimination includes a duty to engage in reasonable accommodation vis-a-vis other kinds of minorities.

What we are concerned about is that the technical wording of this bill is such that that element under the old code will not exist under the new code because certain changes of wording were basically legislated away vis-a-vis the disabled.

Mr. Sweeney: Excuse me, can you draw that to my attention?

Mr. Lepofsky: If you turn to section 38(1) of the bill, it basically says--and I am paraphrasing--when a right has been infringed--in other words when you have been discriminated against generally--you can complain and get an order of compliance with the law. Under the old code, that kind of section has been considered sufficient to build a case for reasonable accommodation, not vis-a-vis the disabled but vis-a-vis other minorities. We have asked for similar kinds of minor accommodations.

Now 38(2) goes on to give us a remedy which says that where you have been discriminated against on account of disability and where you have proven that case, they can make an order under subsection 1 and, in addition, they can make an order of reasonable accommodation. The key words there are "in addition"

because it suggests that subsection 1 compliance with the act does not include reasonable accommodation. Otherwise, why would you have to say that in addition to 1 you have subsection 2?

I realize it is a subtlety and it is only a thing that a person's mind that has been perhaps handicapped by three years of law school could grapple with, but it is a significant point. Admittedly, the solution we offer is to cross out those words "in addition"--and this is in our policy statement--and at the start of the section to say subsection 1 goes; when you have infringed a right you can get an order of compliance.

Subsection 2 will say, without limiting the generality of subsection 1, where there has been an infringement on the grounds of disability, and where amenities are needed and where the cost is low, the board can make a finding and may make an order of accommodation. In other words, you are giving us the same remedy but not taking away from the general principle of reasonable accommodation.

Mr. Sweeney: Could I ask the minister to please comment on that subtlety? I must admit I am being lost again. It is obvious that Mr. Lepofsky sees the difficulty there and I hear what he is telling me, but I am losing an understanding of it.

Hon. Mr. Elgie: Again, I think that will have to come in at clause by clause. I think those are matters that we will discuss in clause by clause when we have legal staff here and they can point out those subtleties to you. The chairman is going to gather all these recommendations and we will discuss them when we get to clause by clause.

Mr. Lepofsky: If I can just refer you to it, you will see in the position paper discussing those recommendations with respect to section 38, and in the orange tabbed paper towards the end the argument I am making is reiterated in text form.

Hon. Mr. Elgie: I just have one question. Your definition of reasonable accommodation means anything that does not cause undue hardship. Is that what you are really saying?

Mr. Lepofsky: It does not impose undue cost hardship, right. We agree with you that you should be able to make regulations to clarify that.

Hon. Mr. Elgie: Do you see any difference between undue hardship in the reasonable accommodation and undue hardship in the power of a board?

Mr. Lepofsky: In the remedy there?

Hon. Mr. Elgie: Yes.

Mr. Lepofsky: No, you could define them both identically. It is just plugging the loopholes so we can get before the board. You can define it the exact same way.

That is why I said your policy statement says you want to be able to give that remedy in the appropriate circumstances, and we agree with that. The problem is unless you plug this loophole, you will not get that remedy, even by defining cost hardship the exact same way.

Mr. J. M. Johnson: Very briefly, Mr. Chairman, I would just like to lend my support to Mr. Renwick. I assume that there was a challenge to the insurance companies to justify their rates for the handicapped. Did you issue a challenge to the insurance companies?

Mr. Renwick: Yes, both when I spoke in the House last December and again on May 22 on the bill. Because of the experience we had on the select committee on company law dealing both with automobile insurance specifically and with life insurance, the question of the excess premiums charged by reason of handicap is one which I think it is very appropriate that this committee should air, bearing in mind that section 20 of the bill simply says that this bill does not apply to the insurance industry.

I disagree with that position, but whatever the decision of the committee is, it is a matter we should talk about during the clause-by-clause discussion. That is why I was anxious that the insurance industry come and put its position, as it has many times elsewhere, to this committee on the question of extra billing for premiums to handicapped people, both for automobile insurance and for life insurance.

9:10 p.m.

Mr. J. M. Johnson: Mr. Chairman and Mr. Minister, I would like to support Mr. Renwick's position. I hope that the insurance companies can give us some justification, especially London Life.

Mr. Chairman: I agree. I will take it under advisement.

Hon. Mr. Elgie: You are not discriminating, Mr. Johnson, are you?

Mr. Chairman: We can ask them to appear before us. We did go a little over time, but it certainly was very extensive.

Ms. Copps: Mr. Chairman, on a point of order, please: This is the second time we have had the debate cut short on an individual. I realize I was late this evening, but it is the first time that I have been late. The debate was also terminated on one of the speakers the last time.

I wonder whether it is in the best interests of this committee to cut short the debate, when all members have not had a chance to air their point of view, and on what basis the debate is being cut short--whether there are rules I was not privy to at the beginning. If the debate is to be cut short, perhaps the chairman

might see fit to limit the number of minutes taken by each speaker or questioner. I do not understand why we are terminating the debate on what is a very important and crucial issue.

Mr. Chairman: Ms. Copps, there is no debate, and I think we made that clear.

Ms. Copps: I would like to know why I cannot ask a couple of questions.

Mr. Eaton: You can. Just put your hand up.

Ms. Copps: I just put my hand up to ask and was told that I was not allowed to because the debate on this--

Mr. Eaton: He did not say you were not allowed to ask a question.

Ms. Copps: Yes, he did.

Mr. Eaton: No, he did not.

Mr. Copps: I am sorry, he did.

Mr. Chairman: I indicated I took the order of speakers. We have gone considerably overtime. If it is the wish of the committee that we ask the other two or three presenters to come back at another time, you could so direct the chair to do that.

Mr. Eaton: If she has a question, let her ask it.

Ms. Copps: The reason I am raising it is that this is the second time in the space of about four sessions we have run into this problem. If these people have taken the time to present an extensive and very technical brief, as they have, I do not see why we should not give them the courtesy of airing every last question. I do not see why they should have to come back. They came here well prepared and we are prepared to ask questions. Why can we not carry on?

Mr. Chairman: I suppose the chair is directed. We circulated the agenda.

Ms. Copps: Directed by whom? That was my question.

Mr. Chairman: We circulated the number of speakers who would be making presentations to us. I think we divided the time up. I do not know whether it is any fairer that Positive Parents have to come back the next day than it is that the Coalition on Human Rights for the Handicapped might have to. I would suggest to you that the time has expired.

Ms. Copps: I am asking you who set the expiry of the time and where these rules were established. I was at the first meeting when we established the rules. The understanding was that we were going to hear people who came and wanted to speak as long as they wanted to speak and as long as there were questions on the floor. That was the rule of order that we adopted when the first organizational meeting was called.

Mr. Chairman: It is my understanding that it was within the time limits allocated. If we are going to have to spend considerable time and if you wish to direct the chairman in the precise way he is to divide up the time and the number of members (inaudible)

Ms. Copps: I might also suggest that this has not been an issue since 1964, for heaven's sake. Can we not give full airing to their point of view? Probably this is the only time we are going to hear and question this group. I, for one, have a couple of questions I would like to ask. As a member, I consider it my right to air those questions.

Mr. Renwick: Mr. Chairman, on the precise point of order, the problem is that we have three other presentations this evening. The committee is due to rise at 10:30.

I can understand Ms. Copps' concern about not having an opportunity to speak about it. I do think we must go ahead and listen to the second, third and fourth presentations. I am quite certain that the coalition would be quite happy not to pre-empt other people's time, but to return again if the committee continues its discussions and receives further presentations at a later date.

That is presumptuous on my part, but that is my view of what the coalition would agree to do. I think that would be the proper course. I am most anxious to hear the other three presentations and I do not want to inconvenience them by not adhering to some reasonable allocation of time.

Mr. Stokes: Very briefly on the same point of order, Mr. Chairman, I can appreciate why my colleague can be so magnanimous in wanting to hear the other three speakers since he used most of the time for questions. I realize this has been a very interesting presentation and I appreciate the difficulties the chair and the clerk, who organizes these presentations, have in judging how long it is going to take.

I would suggest, in the interest of compromise, that rather than wrangling over a point of order, we allow Ms. Copps to put both of her questions briefly. If it appears that it is going to take an extended period of time, perhaps the people could take the questions as notice and answer them, if it is going to unduly pre-empt the time of the committee and prevent our hearing the other people we have scheduled.

Mr. Chairman: The point has been made and we are going to have to bear that in mind. We also must bear in mind that we are here to hear the presentations. As Ms. Copps indicated, we are not here to debate. In view of that, and if everybody is agreed, Ms. Copps, if you have a couple of questions, go ahead.

Ms. Copps: In the interest of expediency, I will reduce it to one question I would like you to touch a little bit on, Mr. Lepofsky, that is, the issue that you raised in your conclusion. One of the questions that seems to be coming before this committee

again and again is the idea that we are setting up some kind of affirmative action program where people like, for example, the physically disabled, will be getting special privileges.

You point out in your conclusion that there are no special privileges to be granted, that we are looking at equal rights. I wonder if you could comment on the public misperception that there is some kind of special privilege or affirmative action program included in the proposed legislation.

Mr. Lepofsky: The bill talks about equal treatment. I do not understand how equal treatment could ever be perceived, except by someone who is not reading the bill, as special privileges. Equal is equal. The problem is that we have been getting less than equal treatment.

In a society such as ours, we would hope it means saying to a handicapped person, "If you are qualified, I will consider you along with everyone else as a potential job applicant." In a society such as ours, that is the kind of equality which we should expect and not call privilege. Unfortunately, without this legislation and without it being amended, it remains a privilege which we do not have.

Affirmative action presupposes that if you are handicapped, you have to be hired. The essence of what we are asking, through all our amendments and through the bill itself, is that if a handicapped person proves himself eligible for a job--and again, I am talking about jobs, but it is not just jobs; it is housing and everything else--he not be excluded on account of his disability, that he enter the lottery along with everyone else who is qualified as a potential employee.

In terms of somehow imposing special treatment, even by requesting "reasonable accommodation," we are not talking about a difference of treatment. In essence, reasonable accommodation goes on in this economy all of the time for everyone else. If an employee moves into an office and needs a lamp, whereas the previous one did not, they give him a lamp. They put in a lunch room for people to accommodate their desire to eat in the office area, rather than go out and buy their meals. Allowing people of a certain religion to have a couple of days off a year for religious holidays is a reasonable accommodation.

If I can use a law example--not that I am obsessed with the law, lest I be stereotyped--if a law firm has 10 partners, one of whom is a civil litigation person and that person leaves and another person joins, who happens to be particularly good in family law and not in civil litigation, they may re-organize who does which work in the firm. That is called job restructure. It goes on all of the time.

That is exactly what we are talking about being considered in this bill. It is not unequal treatment; it is in order to effect equal opportunity. Anyone who considers that to be a special privilege would have to have, to be polite, a warped perception of what equality is.

Mr. Chairman: Thank you very much, Mr. Lepofsky, Mr. Foster, Mr. Southern, and Mr. Theodor. As I indicated earlier, yours is an extensive and well-prepared brief. I assure you it will receive the consideration of the committee. I know there were a couple of individual requests, and I think you had agreed to supply any further information in the interim. Certainly the committee would be pleased to receive any information, either updated or as requested, from your organization. We thank you for appearing before us tonight.

Mr. Foster: Thank you very much.

9:20 p.m.

Mr. Chairman: Mr. Doug Elliott's brief is now being circulated. Would you like to go ahead, sir?

Mr. Elliott: Thank you very much, Mr. Chairman, members of the committee, ladies and gentlemen. I feel I should perhaps explain a little bit about who I am and why I am here since I am not representing any particular group.

I am almost afraid to admit it, after Mr. Lepofsky, but I am a law student. I am going into my third year at the University of Toronto. I am from Elliot Lake, Ontario, originally. I have been interested in this issue for a number of years, both through my school work--I did undergraduate work in history--and through summer employment with the human rights commission itself. I also did a couple of papers dealing with human rights issues this year in my courses at U of T, one of which was the basis for this brief. Basically, I culled it from a more extensive paper in which I analysed the bill.

In the interests of brevity, I should like just to go through what my recommendations are. I think the bill is substantially a good one. I do not have an awful lot of problems with it. However, I would like to add a caveat. I am not sure if this has been brought up by other groups.

The introduction of this bill marks the longest period of time that the human rights legislation in this province has gone without amendment since 1944. If that is a trend that is going to continue in the future, I think this bill is going to have to be very carefully considered by this committee because the code may not be amended for some time again. It appears that you are being very careful in your consideration, and I am happy to see that. I hope you will bear in mind in future that we are getting down to what appears very much to be fine-tuning of the legislation.

There is a typo that I would like to correct in the paper on page eight of my brief, which is the page I plan to start with. Just before the heading, "Appeal," the word "by" should appear between the words "of" and "the."

I would like to go through my recommendations point by point. Point one may seem like haggling and the precise criticism

may seem somewhat unusual, coming from a law student. But I have a lot of difficulty with the preamble and with the powers of the commission as outlined in section 26, specifically the uses of the phrases "discrimination that is contrary to law" and "prohibited grounds of discrimination." It seems to me that the whole history of the legislation in this field has been one of incremental reform and that the law has generally been catching up to social changes.

I think it is rather unwise, especially in the preamble, where we should be setting out what our glorious principles are in this province. I think the basic principle of the human rights legislation is that all people are equal in dignity and rights, and that we are against unfair discrimination generally in this province and not simply discrimination as contrary to law.

The government may have had in mind, in drafting these provisions and using this term, the work of Professor Hunter, who has been particularly concerned about vague human rights legislation being used against employers and landlords, and I agree with his point. I feel that the penalty sections of the legislation should be drafted fairly clearly and should set out precisely what is prohibited.

However, I feel that the use of phrases like "discrimination that is contrary to law" should go from the preamble and also from the powers of the commission because, while I do not feel the commission should be poking its nose into everything, I think it is in the best position to be aware of what groups are encountering difficulties in our society and to gather data on that and pass it along to government.

It seems to me that the way this legislation is drafted essentially takes a question of law reform or changes in this field out of the hands of the human rights commission and puts it squarely in the hands of both legislators and, I suppose, the law reform commission, and I do not think there is really any need to do that.

My second point, which arises out of work that I have done in legal aid, is that I feel there should be some provision--and it may well be covered; Dr. Elgie may be upset about adding another specific point in this area--under the handicapped clauses, dealing with the question of workmen's compensation. There have been quite a few problems with men who have been fired or have lost their jobs due to accidents and have been unable to find employment again.

I am afraid there may be a loophole in the legislation in that an employer could say, "I am not refusing to hire this man because he is handicapped; I am refusing to hire him because he has had a previous claim for workmen's compensation." And he may be able to justify it by saying, "It is not really my concern over the handicap; it is my concern over someone who is accident-prone; it is my concern over someone who is able to pass a fraudulent claim." For that reason, therefore, and I do not think the question of whether the handicap is caused on or off the job should enter into the picture, I believe that a provision should be added under the handicapped section dealing with workmen's compensation.

My third point is a minor one. I find the use of the term "family" kind of awkward. I feel the words that were used in the Life Together recommendation, marital and family relationship or status, is more appropriate.

Point four is a more contentious one. It is my submission that the definition of age should be eliminated. This is already the case in some other jurisdictions, notably in the federal legislation and the Manitoba legislation. While I applaud the extension of protection to those between the ages of 18 and 40, my feeling on the human rights legislation generally is that in principle every group that encounters difficulties should enjoy the protection of the legislation. You will be hearing more from Justice for Children on the children issue, but I feel it can be adequately dealt with by an age of majority exemption.

9:30 p.m.

As far as mandatory retirement goes, I understand that there are a number of honourable members who prefer to deal with that issue at a later point. However, I feel that it is most appropriate in human rights legislation and I would urge members of this committee to follow the example of the Quebec House, which has recently moved to outlaw mandatory retirement at 65.

My fifth recommendation contains two fairly contentious points which, again, are present in other provincial legislation and were contained in the Life Together recommendation. The first is sexual orientation. It is my feeling that there is no question that there is, has been, and continues to be discrimination against homosexuals in our society. The discrimination against persons on the basis of sexual orientation is already specifically prohibited in Quebec, and it has been argued that it is also included by virtue of the reasonable cause provisions in the Manitoba and British Columbia legislation.

I realize that other groups are going to support that proposition. As well, I would simply like to add my voice to theirs. I realize that this is a tough policy issue that the committee is going to have to wrestle with.

However, I find it a little more surprising that the government has not included political belief in this legislation. It seems to me that it is not really a very contentious issue. It is contained in a number of other provinces' legislation. It is in keeping with our Anglo-Saxon legal tradition of freedom of conscience and freedom of speech. It seems to me that freedom of speech or freedom of conscience is not worth too much if you can be denied employment or accommodation or services and facilities because of your political beliefs. Unfortunately, in the past, notably people of left-leaning political persuasions have been subject to rather vicious discrimination in our society. Therefore, I do not feel it would be just an empty gesture. I think it would not only be a good statement of principle, but would also protect certain people in our society.

Point six, and I feel that Dr. Elgie may have particular objections to this recommendation, is concerned with the crown

exemptions contained in section 14(5) and section 48(3) of the bill, which basically exempt the government from the scrutiny of the Ontario Human Rights Commission in questions of affirmative action programs and also give the government two years lead time in deciding what pieces of legislation will be bound by the human rights code. As far as the first exemption goes, I see no reason for government departments to get this favoured status with their affirmative action programs. I see no reason for Union Gas to have its affirmative action programs scrutinized by the commission and not Ontario Hydro. It makes no sense to me whatsoever.

As far as section 48(3) goes, I can understand that the various government departments would like to have a look at their legislation to find out what should be exempt from the primacy provision of the human rights code. It is my feeling that they have already had four years to do so. This recommendation of primacy came down in 1977. No other group is given any lead time, in terms of adjusting policies and so on, to deal with the code, and I do not think the government departments should be exempt either.

Mr. Sweeney: Excuse me, could you correct that section 48(3)? I cannot find it.

Mr. Elliott: Excuse me, section 44(3). I am sorry, that is a typographical error too. It is the two years' delay in implementing the primacy provision.

Another couple of sections exempting certain things that I have difficulty with are 19(3) and 19(4). These are the provisions dealing with the size or type of building that marital status and family prohibitions apply to. It seems to me that if this type of discrimination is going to be prohibited, the size, shape or anything else to do with the building should not come into the picture. It should apply to all types of accommodation.

I would especially point out to this committee that this type of exemption caused considerable problems with earlier legislation and led to a rather expensive and protracted battle which finished up in the Supreme Court of Canada. The case of Regina v. Tarnopolsky ex parte Bell dealt with a provision dealing with self-contained dwelling units, which is, admittedly, a little more vague kind of provision.

Essentially, I would echo the concern of the previous speakers that we should attempt to avoid potentially protracted and expensive litigation over what falls within the code and what does not fall within the code. In the case of accommodation, with the exception of the 19(1) exemption--in other words, accommodation which is shared intimately with the landlord and his family--I do not think anyone has any problems with exempting that, especially when it is defined quite clearly in that way. I think it should apply to all accommodation and that would save a lot of hassles in the future, I feel.

On point eight, reasonable and bona fide qualifications. It is my feeling that this should be defined in the code,

particularly because I think it has been given a slightly too large a meaning by the courts. I am thinking of the recent case dealing with the firemen and mandatory retirement at 60. I feel it should be restricted to a necessary quality related to the objective needs of the respondent that can be proved on a balance of probabilities by the respondent. Right now, the courts have said--Mr. Justice Weatherston--that essentially all it has to do is have some basis in fact, if it honestly held and it is reasonable and bona fide.

On point nine, although I am not suggesting that this power is abused by the commission--it certainly is not--I do not see any reason why the commission should not have to get search warrants to enter premises when police officers are obligated to do so.

On point 10, it is my feeling right now this is still in limbo, as far as the existence of a civil action for discrimination is concerned. As far as I know, the Supreme Court of Canada has not ruled on the fate of the Bhadauria v. Board of Governors of Seneca College case. As it stands right now, there is, pending the outcome of that decision, a tort of discrimination in Ontario. I feel that should be specifically recognized in this bill. It is my feeling, in accordance with what Professor Hunter, again, has written on this point, that it should be limited.

I think this deals with a number of problems. First of all, the commission, according to this bill, has complete control over who makes a complaint and who does not. It has control over whether a complaint is taken or not; it has control over whether or not a board of inquiry is recommended. I am not suggesting either that the commission exercises its discretion capriciously. However, there is room for reasonable people to disagree in certain cases.

9:40 p.m.

It is my feeling that the reconsideration provision--I believe it is number 34--is a complete waste of time. I do not even think it need be in there. Essentially, it would be a rubber stamp and essentially a waste of time for everyone, much as seems to happen in Workmen's Compensation Board cases where there are unnecessary levels of appeal, where you essentially have people working in the same office approving the decision that the person at the next desk made for them. I do not see any need for that. A person should have an option if the commission refuses to take a complaint for them though or if the commission refuses to recommend a board of inquiry.

Another of my concerns with the current situation with human rights in Ontario is the disgraceful delays which occur in the handling of complaints. I recently attended a board of inquiry where the original incident had taken place more than three years ago. If there was a civil action, I am sure that the damages in question would not amount to more than a few hundred dollars. This is a ridiculous situation.

I can see a number of provisions in this code which deal

with trying to to speed up the process, such as insisting that board chairmen have their decisions out in 30 days. Especially since you are now putting a time limit on when a person has to file a complaint, that is, six months, it is incumbent upon the commission to deal with a complaint expeditiously as well. I feel that after six months a complainant should be entitled to insist on a recommendation to the minister, one way or the other, on the fate of his complaint, a board of inquiry or not, a complaint or not. At that point, they should be able to institute a civil action if they so desire. In that way, a complainant has an option, a real, viable other option, another forum where he can take his complaint if the commission does not wish to deal with it.

I think my final point has caused some problems but not an awful lot. This is not a change from the previous legislation, but I feel it should be. As it stands under the current legislation and is continued under this code, a right of appeal to the Supreme Court will be allowed on questions of fact and law. In these sorts of situation, I feel the Supreme Court of Ontario has no business looking into questions of fact. In order to deal with complaints expeditiously, it should be restricted to the questions of law alone. In fact, in view of the commission's tradition of appointing law professors as chairmen of boards of inquiry, I am not even sure whether it is even necessary to leave that in. Judicial review of decisions might be sufficient. But certainly I think there is no point in dragging cases on any longer by allowing them to go over the facts again in Divisional Court. Therefore, I would recommend that right of appeal be restricted to questions of law alone.

I would respectfully submit that if those recommendations, among any others which come before this committee, are added to the current bill, then we will, once again, have the best human rights legislation in Canada. Ontario has been a pioneer in this field all along. I do not know whether it is disgraceful, but it borders on it, that we are currently in a situation of catching up with other jurisdictions in this field. I feel if the bill stays the way it is now, we will still be behind other jurisdictions and may be behind them for some time to come.

I would be happy to entertain any questions.

Mr. Chairman: Thank you very much, Mr. Elliott. Mr. Lane, the first question

Mr. Lane: Thank you very much, Mr. Chairman. Mr. Elliott, we have one thing in common, Elliot Lake. I am from that area.

Mr. Elliott: Yes, I am aware of that.

Mr. Lane: It is nice to meet you.

On your third point there, you were talking about the difference in the wording, as you see it, between family and marital status.

Mr. Elliott: Essentially the two should be combined to show they are related. Secondly, I just find the use of the words

"discrimination because of family" to be kind of awkward. I feel the two should be combined into the more workable phrase of "marital and family status."

Mr. Lane: You say combine the two?

Mr. Elliott: Yes, to show they are related and to make it a little--

Mr. Lane: In four, I assume you are saying retirement at 65 if necessary, but not necessary retirement at 65.

Mr. Elliott: Exactly.

Mr. Lane: All right, I wholeheartedly concur with that. I am 100 plus.

Mr. Stokes: Is that your age?

Hon. Mr. Elgie: We age quickly here.

Mr. Lane: I might have some disagreement on number seven. If I am an owner of housing with three or four units to rent and my family are, say, occupying one unit in a four-unit apartment building, I feel I maybe should have some rights as to whom I decide I want to be there to be compatible with the kind of lifestyle my family feel we should enjoy, whatever particular stage we are at.

Do you see any problem with a four-unit or six-unit apartment being--

Mr. Elliott: I realize in this area it is a question of where you draw the line, but I would throw back a question on that point. Essentially I feel, number one, where they actually share the premises is where I would draw the line. Outside of that, if it is even a duplex I think what goes on upstairs is the business of the people upstairs, the type of people who live up there. If you are not sharing the actual premises, that is where I would draw the line.

If you want to draw the line at four units, what I do not understand is why you draw the line at four units only in terms of marital status, because that is the only thing that is covered here. Under subsection 4 it is not four units, for a family it is a building with a common entrance, no matter how many units it contains, two or 100.

I think there should be some consistency in the bill. If the committee thinks, if the Legislature feels, that four units is so intimate that discrimination in buildings below that size should be allowed, then I think it should be allowed for everything.

Mr. Lane: What I am thinking about is, say, a man and his wife own a building and have three units to rent. They are senior citizens and they want a reasonably quiet atmosphere and they rent to a noisy tenant or to somebody with a large family, or whatever, where it is going to disturb their peace and quiet and

enjoyment of their sunset years of life. It seems to me if I own the building I should have some protection as an owner to take who I want into that kind of housing situation.

Mr. Elliott: Absolutely, and I would certainly agree with you, Mr. Lane. However, I do not think there is a necessary correlation between the amount of noise that someone produces and their marital status.

Mr. Lane: So that is really what you are objecting to.

Mr. Elliott: Right. I think the point of the legislation--and I do not know if you have heard from landlords yet, but my experience with the commission was that landlords constantly raise this, "I want to be able to choose the kind of tenants that I want."

I think that is fine, and certainly if a tenant is making a lot of noise they should have the right to evict them. I do not think they should have the right to judge because someone is single or divorced or a single parent, or whatever, that they are necessarily going to make a noise. If someone has excellent references and has caused no problems for the 20 years they have been renting, why should they be denied simply because they are single?

Mr. Lane: I think you have made your point, thank you.

Mr. Sweeney: Just briefly, I want to be sure I understand what Mr. Elliott is saying in this point seven. I thought the argument you were using was that this would lead to unnecessary litigation.

Mr. Elliott: That is part of my argument, yes.

Mr. Sweeney: Three and four seem fairly clear to me and your answer to Mr. Lane makes it even clearer. In what way do you feel it could lead to litigation? I can understand your objecting to the definition; that is a legitimate objection. But I do not understand the argument that follows, that it would necessarily lead to litigation. It seems pretty clear.

Mr. Elliott: It has been my experience that the problem area, as I say, is defining what is going to be considered a dwelling unit and what is going to be considered as served by a common entrance, especially with a dwelling unit. I think the courts have come pretty close to narrowing that down right now, but especially in older buildings where there are rooms and a common bathroom and a common kitchen and so on, it is often very difficult, in my experience in landlord and tenant disputes, to determine what dwelling units exactly are.

9:50 p.m.

If it is a borderline case I do not think it should be necessary to go to court to determine whether the building has five dwelling units or four dwelling units or three dwelling units, depending on whether there is a lock on the door; they look

at all kinds of things in determining what constitutes a dwelling unit. I think the presence of that in there could cause some problems and it should go.

I agree, my main contention is that it should not be there in the first place, but I think it involves the additional problem of litigation.

Mr. Sweeney: A question to the minister, please, with respect to point six: I think Mr. Elliott has made a good case. Quite frankly, why should Consumers' Gas have this applicable and Ontario Hydro not? Is there some reason that I cannot follow? The crown exemption in sections 14 and 44; why are they in there?

Hon. Mr. Elgie: Again I think it is interesting that you and I can take up the time when there are others waiting. These are matters that we can discuss as we go through clause by clause and I think that is what clause by clause is all about.

Mr. Sweeney: I am just trying to understand the point that the witness is making while he is here.

Hon. Mr. Elgie: I think his point is clear.

Ms. Copps: I just want a point of clarification. Thank you for coming and presenting such a well thought out brief. My understanding when I read section 19(2), which you have asked that we delete, I thought that applied to residences like in universities or something like that.

Mr. Elliott: Right. That is an error in the brief; it should be subsections 3 and 4. I do not have any problem with 19(2). I know what they are talking about there; I think it is perfectly legitimate.

Ms. Copps: Having lived in a women's residence I had to bring it up.

Mr. Elliott: I lived in a mixed residence and had no problems there. I realize some could go the other way.

Mr. Chairman: Thank you very much, Mr. Elliott, for presenting your brief to us tonight. It was very clear and concise, I think, and we can understand what you are driving at.

Mr. Elliott: Thank you. I might add that now that I understand you are going to be continuing your deliberations over the summer, if any members of the committee have any questions I would be happy to answer them if they would direct them to my address or telephone number that is on the outside of the brief.

Mr. Chairman: The Blind Organization of Ontario with Self-help Tactics, Mr. Yale.

Mr. Yale: Thank you, Mr. Chairman, and members of the committee. My name is Michael Yale, I am the chairman of BOOST, the Blind Organization of Ontario with Self-help Tactics. I will

be making some introductory remarks to be followed by Mike McHenry.

Mike is a staff member of BOOST in our Hamilton office; Joanne Yale, the immediate past president of BOOST, who is also a resource development worker, a staff member in our Toronto office; and Dick Santos. Dick was a director of the Centre for Independent Living in Berkeley, California, and BOOST has employed him on a special Canadian organizing committee for 1981 project, so Dick is on our staff working out of Toronto.

I would like to begin by saying that some years ago I was travelling in Chicago with my guide dog and I was going through a large hotel lobby, one of the hotel lobbies that are a block square, full of couches and chairs and lamps and seemingly hundreds of people. My dog was doing a very excellent job of getting me around through all of this maze when I heard a gentleman as I was passing say: "Dear, isn't that lovely? Look at that fantastic dog." The wife responded, "Yes, and look at that blind guy, he is getting around as though he were almost human."

Unfortunately attitudes like that still are with us and still do persist. We of BOOST are very much aware and have said many times that legislation by itself does not bring about a change in those kinds of attitudes; it does not bring about the ultimate acceptance of the rights and the equality of handicapped and disabled people. It is very important to change attitudes and to do the kind of public education work, and in fact self-education work, that does in fact change attitudes. That is the responsibility of groups such as BOOST, consumer groups, groups of handicapped people.

It is also important to have legislation; to have legislation that forms the foundation of one's equality and gives one a kind of a base from which to go about changing attitudes, a method of redressing overt discrimination. That certainly includes the human rights coverage for handicapped people in Ontario. In fact, that would be a fundamental part of any legislative package.

BOOST was founded in 1975 and in the spring of that year, actually before our first full convention, our membership expressed tremendous interest in human rights coverage. In fact, legislation was one of the first focuses of BOOST, along with employment issues and public education. In our first legislative package human rights coverage at the provincial level was considered primary. This, as I say, goes back to 1975.

BOOST also made a submission to the Ontario Human Rights Commission review committee and in June 1976 eight BOOST members with various disabilities, not just blind people, made an oral presentation before the review committee.

BOOST has endorsed all of Life Together and as a result some of our comments here this evening will focus on issues that are not directly relevant to handicapped people, although certainly the situation of the handicapped is of primary concern to BOOST. We are concerned with some of the other aspects of the code and will be to some degree touching on those.

Another past president of BOOST, John Rae, can take a lot of credit for selling the idea of primacy, not only to consumer groups but also to agencies in this province. I think when we started out most of us did not even know what the concept meant. I think John deserves full marks for really teaching us the importance of that concept and we will make some other comments about that a little later.

We have submitted several briefs on various aspects of human rights coverage to the provincial government, circulating many of these documents to all the members of the provincial parliament. We have worked on the coalition and BOOST was one of the charter members of the coalition since it was hastily brought together in the latter part of 1979.

Certainly we generally endorse many of the things that were brought to your attention tonight by the coalition. We do have some differences in some respects which again we will make a little clearer later on this evening.

Let me then just turn to a couple of specifics before introducing my colleagues. The first thing I would like to say is certainly we support the inclusion of reasonable accommodations. The bill is very unspecific as to what equal treatment does mean and, as the coalition pointed out, extending purely equal treatment can often lead to systemic discrimination.

For example, if I were to be given a printed application form, despite the fact that every other employee in effect has the same opportunity as I do, because of my blindness such equal treatment can lead to discrimination against me in my job. We believe that without reasonable accommodation and without the clear understanding and definition of what equal treatment does mean, the coverage of the proposed bill is very much weakened.

10 p.m.

We are in favour of the position of the coalition on the question of insurance. We are aware that during one of the negotiating sessions leading up to Bill 209 it was made clear that the insurance companies did not have actuarial tables which indicated a greater risk on the part of handicapped people. We agree with the coalition that without this kind of evidence and so forth these exemptions from coverage should be eliminated from the bill.

BOOST is also in favour of reversing the onus in a similar manner to that in the Saskatchewan code, whereby once a prima facie case has been made by the complainant, the burden of proof would shift to the employer or the provider of services or whatever.

We would urge you to consider that. That is a very important point because we are aware that most handicapped people, being passive, often being intimidated, afraid of officialdom and bureaucratic red tape and so forth, would be very much inhibited from pursuing their rights under this bill if the onus were on them, as it is at present under the bill.

I would like to introduce Mike McHenry and my colleagues to make some more specific comments about the bill.

Mr. McHenry: I would like to speak briefly, if I may, on the topic of sexual harassment and the need for its inclusion under the Ontario human rights legislation and protection under the Ontario Human Rights Code.

Sexual harassment is an exploitative process which creates intolerable working conditions for women. Blind people are very familiar with intolerable working conditions in that sometimes as handicapped people they are expected to live up to unrealistic expectations. Thus it is easier for us as blind people to identify with women who are sometimes victimized due to their sexuality, especially in the work place.

Male defensiveness has not proven to be a very constructive factor in dealing with sexual harassment. Blind people do not accept, any more than women accept, their subservient economic position. Women are beginning to come out of the closet and speak up on the issue of sexual harassment much as handicapped people have come out of the closet in the same way. Sexual harassment, as I mentioned, is an exploitative practice.

The issues of sexual harassment and related issues are no less important than the items which handicapped people face in their everyday lives. We, like women, are striving for equal wages, equal employment opportunity and consideration of ourselves as whole human beings, rather than isolating one aspect of our existence--in my case my handicap, in a woman's case her sexuality.

If the Ontario Human Rights Code is to accomplish its goal of ending exploitation and injustice in the work place, then we must address ourselves to the issue of sexual harassment. It could be defined as any sexually oriented practice that endangers a woman's job; that is, that could serve to undermine her job performance and threaten her economic livelihood.

Of the few issues relating to sexuality which have come before the Ontario government, that relating to sexual harassment has been longest ignored. The fact that sexual harassment has often been ignored is a reminder of the powerlessness with which women were formerly faced in society and in the work-related situation. It was a status reminder.

The existence of sexual harassment in the work force can poison a woman's working environment and dramatically detract from her effectiveness at work. This dilution of effectiveness is something which society can no longer afford. The existence of hierarchical employer and employee relationships can create an atmosphere conducive to exploitation, that is, sexual harassment.

An unsolicited sexual advance made by a person with the power to hire and fire is inherently coercive. In a society where a woman is fundamentally defined as a sex object, and men hold most of the positions of power and influence in an hierarchical

work structure, it is almost inevitable that sexual harassment has become such a pervasive figure of many working environments.

The interest of protective laws on sexual harassment will have economic benefits for the entire province. The coercive nature of discrimination against women can also be related to that which we face as handicapped people, and it is BOOST's sincere hope that any discrimination be eliminated.

Ms. Yale: I have three major points I would like to address to the committee. I am very pleased to be able to be here tonight to present them on BOOST's behalf. The first deals with attitude--and Mike McHenry's points are very well taken. The double paternalistic treatment I have to put up with every day of my life is just-- You would not believe it. I use two very blatant examples.

First of all, I travel around with my very fine guide dog named Myra. I travel around and I get about, but once in a while every guide dog at some time or another needs some type of correction, or some type of reinforcement, good or bad, negative or positive. Any time that I am giving my dog some type of feedback, I am always being interfered with, as if, well, my dog is the superdog; I know nothing of what I talk about; I am blind, so I am not a full person; the dog is smarter than myself.

I find this extremely upsetting. It means that I am constantly being kind of demeaned; I am not looked upon as a full person. And because I am a woman that makes it even harder.

The other point I would like to address, the other actual part of this point, is that I have a friend who is a parent. She is blind; she has two sighted children. Whenever she travels around or whenever people who are acquaintances run into her they assume that that child of her's must be just absolutely wonderful, a great help to have around.

They do not look at the fact that kids are kids. They do not look at the fact that just like any other kid, it does not matter whether your mother or father is blind or sighted or handicapped or whatever, they just assume that that kid is really superkid, and that that kid must just do every single bit of housecleaning, must help the mother to dress, must tell the mother what colour of clothes they have on, must do everything in order to help that poor blind mother; that that kid can now save the family.

I am really tired of this kind of stuff going on. The only way we can try to make these points is to actually express them, to let people know that these things are happening. I just find it extremely upsetting--and I am speaking from my own personal experience; I find it extremely frustrating.

The second point I really feel it is important to express is that even our laws with regard to the aid system are extremely sexist. I find it upsetting because what happens here, even despite the fact that a lot of people are talking about sexual harassment--and I say let's get rid of this sexual harassment; let's really address the issue and say that this is happening and

try to do something about it--but our aid system, and some of the laws we have with regard to, let's say, the low-income people, are some of the most discriminatory laws in many ways. There is a lot of sexism in the family benefits legislation at the present time.

10:10 p.m.

This is a really important point: If you are a disabled woman and you are married to a nondisabled man, you do not really have the right to get benefits, because the society expects that the man will provide, the man will take care of the poor disabled woman. Whereas, if there happened to be a disabled man married to a nondisabled woman, what happens here? Obviously the nondisabled woman needs some assistance in this kind of thing and we should give the disabled man as many benefits as possible.

It is BOOST's contention that the primacy clause must be airtight so it can be used to strike down such reprehensible regulations as these types of aid laws. We practice them every day.

The third point I want to address is that BOOST is in opposition to any mandatory retirement age with regard to employment. People should be allowed to work if they choose, regardless of age.

Unfortunately the senior citizen and the handicapped person are in the same boat. As far as I am concerned, society refuses to realize it needs and can benefit from the experience and expertise of older people and of handicapped people. These are all untapped resources. Forcing people to become unproductive at a certain age is not good social policy, especially when you consider the growing number of older people in our society. This increase is due to technology, due to the fact that we all don't die as quickly. The medical system is much more advanced.

As far as the disabled are concerned, many of them become disabled in later life. Their hard-to-find job should not be terminated before their productive years are over.

I would like to add one more point. Don't look at what is just on the outside of a person. For heaven's sake, look inside: Is this person qualified? This person should not be discriminated against because of being a man or woman, for being fat or skinny, black or white. This person should be looked at for what he or she is on the inside. Never mind these labels; let's get rid of them. We really need to think about those things and start working on them.

Mr. Santos: I would like to address several issues which have been touched on by various speakers tonight, but I am going to approach them in a little different way.

First, just one point of information. At the Coalition of the Provincial Organizations of the Handicapped national conference which is being held this weekend in Quebec City, there is a workshop on Obstacles. It will be bringing forth recommendations on some of the areas that are addressed in Obstacles. We will attempt to provide those recommendations and

comments to the committee, since I and several other members of BOOST are delegates to the COPOH conference.

I would like to address "reasonable accommodation," which you might be getting sick of hearing about. However, you are going to hear some different things from me. I would like to talk about reasonable accommodations in the whole life of a disabled person and in the whole society's framework, because I believe reasonable accommodations are important in education--as has been mentioned--in receipt of services, in public places, et cetera. I want to address myself to this broader spectrum than just within the employment area. Unless you start thinking about reasonable accommodations in the whole spectrum that a disabled person has to deal with, some of the ideas gets lost.

If a person cannot get up and down a curb because he or she is in a wheelchair, that is a block to the person becoming employed; that is a block to the person becoming independent. If a person cannot receive decent secondary or even elementary education, that means the person is at least one down, and I would argue two or three down. That is another factor that has to be considered.

If a deaf person goes to a hospital emergency room and there is no one to communicate with that person effectively, he or she could lose his or her life or could come to have a double handicap because of not receiving correct medical attention.

These are some areas which I want to prick your mind with, because reasonable accommodations should not just be restricted to the employment area. It should be required within education systems and I would argue--and I believe BOOST would argue--that the age limitation should be removed so that you could deal with elementary and secondary education.

Regarding reasonable accommodations within the college level: I will give you a perfect small example of what a reasonable accommodation could be. Suppose I am biology major in a wheelchair and one of my required courses is in a two-storey building with no elevator. I would argue that reasonable accommodations would be to move that course to an accessible building. That is the kind of thing that can happen when you think about reasonable accommodations.

Another thing that might happen for reasonable accommodations: Maybe I am a biology student and blind and maybe there is a fairly expensive piece of equipment which would allow me to dissect frogs or figure out something about a vertebra or something of that type. There are two or three ways it might be acquired. Possibly--and I just say possibly--the college should come through with that piece of equipment. I am not arguing that point particularly; I am just raising that as another example.

I would like to move to the employment area around reasonable accommodations. Before I do that, I want to emphasize again that I think you have to look at reasonable accommodations in the broader perspective. I am not an attorney--I think I am one of about the three people who is not tonight--and I will not

attempt to argue whether it is covered or not covered or whatever. But I would urge strongly, and BOOST urges strongly, that the reasonable-accommodation concept should be as strong as possible and that it be looked upon as covering the broadest possible number of services, facilities, goods and education.

10:20 p.m.

Now I will move on to employment. I believe that the employment area has been somewhat covered, but I want to raise a couple of different issues. One of them is that we have to look at the types of employers and the range of employers. For instance, I would argue that Standard Oil of California or--I cannot think of a good Canadian oil company--

Mr. Havrot: Petro-Canada.

Interjections.

Mr. Santos: Dome Petroleum or Campbell Red Lake, maybe, somebody of that type--I would argue that the purchase of a \$2,500 closed-circuit TV camera is not a hardship on them. However, I would say for the local legal service program that is running under a \$50,000 a year budget, it would be, if I was hired as a legal assistant, as an example.

I think we have to look at more of the facets, more of the things that would point towards what reasonable accommodations are. This kind of principle extends to the service area and the facilities, et cetera.

Another example I want to give is, suppose you have a string of medical clinics throughout Toronto; say that one company runs 15 or 20 medical clinics. I would not argue that every single one of those clinics should be made accessible to people in wheelchairs but I would argue that some of those clinics should be made accessible, or should be accessible.

These are ideas or principles I want to raise and I think we are all striving for handicapped and disabled people to take their fullest part in society, both economically and in quality of life issues; and employment is certainly one of the major issues. Therefore we should look at the broadest kinds of reasonable accommodations possible, with due hardship as one of those factors, but not the only factor, not the only hook that we hang things on.

I move on to two other points. One of them is contract compliance, which government has, in many cases: overseas contracts for various issues; various union contracts which are affected, other civil rights or human rights code violations are checked and are expected to be adhered to. As far as the disabled are concerned, that should be a consideration, a major part of whether or not contract compliance really can be used as a strong monitor, because we need monitors on human rights legislation.

The other point is that BOOST has taken a position of supporting quotas in employment. This has been tried, and very

effectively so, in other places around the world, in western Europe to a large extent, and given the deplorable situation of employment for the handicapped and--I am going to make a jump in a way--even given the unemployment rate for able-bodied people, what are the prospects for many disabled people to get hired? I feel that a quota system, even though I know it is abhorrent to many people, has to be looked at as a reasonable alternative.

Those are the points I wanted to cover. I just will say that we totally agree, as Mike stated already, that the insurance industry should not be excluded and that they should have to prove on actuarial tables that it is more expensive for disabled people.

Mr. Yale: Thanks, Dick. I want to make two more small substantive points and then a final comment, and then we would be very pleased to answer any questions.

First of all, BOOST would like to call your attention to the fact that we obviously will need this amended code, all regulations and procedures connected with it, available in a usable form, in Braille, on tape and so forth.

The federal code is being put into Braille, the Saskatchewan code is in Braille. In fact, some of the drafts of previous bills in Ontario have been made available on tape to us; but I just call your attention to the fact that it is very important that these kinds of documents be made available to us in a usable form.

Secondly, we would also like to call your attention to the need of supplying more expertise and more money for the commission itself. We suggest that needs to be done and can best be done by hiring handicapped commissioners, to bring their expertise into the system and enable them to be involved in the process once the bill is in place.

I would like to say finally that we wish to thank the government and the committee for giving us what has been our right all along, and that is input into decisions that affect our lives. Unfortunately we have not always been given that opportunity, even though I consider it to be our right--and Joanne is whispering to me that is not a special privilege, but a right. I agree with that.

Input has not always been the case. It has been in this process, and it has been a very important process to a lot of us.

As I mentioned earlier, we know that legislation by itself does not bring about acceptance, that there are other things that one needs; but in the field of legislation, with the code and the amendments suggested by the coalition, Ontario can once again be in a leadership position as far as legislation is concerned.

The rest of it--some of it is up to us, and that is the changing of attitudes. I am glad to see that this government is talking about a decade for the handicapped, not just one year. I believe that there are a number of other things that, although not directly related to you today, will be before you in the months ahead.

We certainly have demanded participation in programs which affect us. You have extended that to us in this case. We have insisted upon the decision-making power at the agencies which seek to serve us; that is one on which we continue to battle, day in and day out.

We would like to see this province provide core funding for self-help groups and the self-help movement in Ontario; I think that is indispensable, to show that you really do have a commitment to us, the handicapped consumer, and not just to the mass agencies that have provided services without our permission for many, many generations. We want more jobs for handicapped people.

All of these things are issues that affect us very much; and I would say that this process has taught us one thing. I am glad to say--maybe I shall make one very small self-serving comment; it is a lesson BOOST learned a long time ago, but okay, the rest of the movement is catching up with us and I am delighted. That comment is that direct action works, that we are learning how to use politics, we are learning how to bring our case to you and to not back away until we get the kinds of things that we need to bring us into full citizenship in this province. And I can absolutely promise you, we shall be back; you will see us again and again on all of these issues until equality and full citizenship for the handicapped in this province is a reality.

Thank you very much; and we would be pleased to answer any questions you might have.

Mr. Chairman: Thank you very much, Mr. Yale and other members of your organization, for your presentation tonight.

Are there any questions from anyone?

Mr. Sweeney: Mr. McHenry, you dwelt extensively on the area of sexual harassment. Were you indicating that you were in approval of section 6 in the legislation, which deals specifically with that, or were you suggesting that it was not sufficient? I was not sure what your point of view was.

Mr. McHenry: I was suggesting that the section currently in place is acceptable. What BOOST was concerned about was that the initiative shown be carried through as far as the final form of the legislation is concerned, but we were very pleased with the wording.

Mr. Sweeney: Thank you. That is all, Mr. Chairman.

10:30 p.m.

Mr. Chairman: If there are no other questions, then we thank you once again for an excellent presentation to us tonight.

Mr. Yale: Thank you very much.

Mr. Chairman: Mr. Pritchard and Mr. Newton were scheduled to appear before us tonight. I know that Mr. Pritchard

cannot come back tomorrow morning. I am open to direction from the committee. We did start about 10 minutes late; perhaps by sitting until 11 we could accommodate the Positive Parents group.

Mr. J. M. Johnson: I, for one, would like to sit an extra half hour.

Mr. Sweeney: They have been waiting a long time.

Mr. Newton: Mr. Chairman, may I make a comment, please? My name is Mr. Newton. I do not mind coming back at any time, but Mr. Pritchard does not have the same time available which I have. He only has a five-minute oral presentation.

Mine is not a very important one. I will leave copies with you. I don't have to make an oral presentation. I will just leave my copies with you. I do not have to come back and waste your time. We will be busy in other areas. I would appreciate your courtesy to Mr. Pritchard by extending your sitting for 10 minutes.

Mr. Chairman: The committee is in agreement. Thank you very much, Mr. Newton.

Mr. Pritchard: Thank you, Mr. Chairman. I could have been here all night, but I am glad we are getting out of here.

I am just a parent who is very concerned about the homosexual problem. I have 10 children. They have all gone through the public school system except the last two, who I withdrew on February 23 after the meeting with the board of education. They are at present at home taking a course of education under the Mississauga Christian Schools. I am not paying anything for this at the moment. We are not being charged for this.

I want to commend the government on its position with respect to not giving homosexuals coverage in the human rights code, specifically the inclusion of sexual orientation. I stated my position on that matter in an article in the Sun on February 18, which read as follows:

"When are politicians going to wise up to the fact that the homosexual problem is not a political problem but a spiritual and moral one, which requires treatment? Therefore I propose that treatment clinics be set up to offer voluntary counselling services by qualified personnel in that area. This will remove, once and for all, the problem from the political arena and place it in the field of treatment and rehabilitation where it belongs.

"Politicians will then no longer have to address themselves to all the groups who keep promoting the idea that the homosexual problem is a human rights problem and therefore a political problem. Homosexuality has nothing to do with human rights. Homosexuals are not a minority. They are simply members of the general population with a sexual disorientation problem which is curable." The word "curable" I would like to change to "treatable."

I had tuberculosis after I came back from overseas and I spent four and a half years in a sanatorium as a result of my war

service. I have not had any problems for 20 years now as a result of that treatment, but they never call it "cured," they call it "arrested"--the condition I am in.

In connection with that, I wrote a short note to the chairman today, in which I said, "As a concerned Christian parent and taxpayer I make the following suggestion to your committee for your consideration and action; that the government enact suitable legislation to provide trained counsellors and treatment facilities for people suffering from homosexuality." I signed it and I will leave it with you.

I am not going to go into any of this other material that I have here. I have material which you can peruse yourselves, that I brought for the members of the committee. I have two copies of a book called, What Everyone Should Know about Homosexuality, written by Dr. Tim LaHaye, who is a recognized authority in the field of treatment of homosexuals. He is a counsellor in that field and has been for about 25 years.

If you turn to chapter 12 in this book--I only have two copies of it, one for the chairman and vice-chairman--you will find the dangers that we face if we do not face up to the problem that it is not a political problem, but one of treatment of--not a disease exactly, but it is a form of disease which can be treated. It is up to the persons who are suffering from it to make a decision in their own life that they can be helped. But if the government provides that service, then I do not see any reason why they should come back to you on political grounds any more.

I would be quite willing as a taxpayer--and I have not got the money to throw around, I am just working for Metro as a caretaker in a day care centre--but I would be quite willing to have my tax dollar spent, if it was necessary, if we could not find the money any other way, to assist them in the treatment of the problem.

Nobody that I can recall in the last 10 years that this thing has been bandied about in the United States and now in Canada--we are now the headquarters for it here in Toronto, as San Francisco is in the United States--nobody has mentioned treatment. Everybody keeps talking politics and human rights.

I fail to see where there is any human rights involved. I have material here on that, that it is not a human rights issue. I will leave that material with you for your perusal and I would be happy to be in contact with any members of this committee who feel as I do, that they would be better off by far; they would not have to have these groups constantly coming down here.

There is some question in my mind as to who are behind these people. Are they being used as a political tool for social change? I do not think it is fair for a person who is not well to be used as a tool for political change. I have a list of many Marxist-Leninist groups, such as the Marxist-Leninist Lesbians Association and the Marxist-Leninist Homosexual Association. Those people are involved in using these people. I object to that very strongly.

I have a lot of other objections but I am going to cut my remarks off now so we can all go home and get a good night's rest. I appreciate very much that you are giving me the opportunity to speak. I am speaking only as a parent and I have taken my stand. My children are out of the school system and they will never return.

If I had known what I have found out in the last eight months as a result of being involved in this homosexual issue--about the secularism that has been rampant in this school system. I was reneging on my responsibility as a father. I had 10 children go through that system and I did not realize about the secular humanism and the atheistic type of thing that was being taught to our children. I never would have realized it if I had not got involved with this issue.

This opened my eyes. I took my stand and I removed my children. We don't know where the money is coming from to send them into this academy in September, but the Lord will provide. I think that is about all I have to say. I would like to leave this material with the chairman for distribution. I will contact someone on this committee and perhaps we can get together.

I have discussed this matter of counselling with several ministers in Toronto because I have been in contact with several of them, and they all agree that they would be willing to help. Maybe then we could form a committee to get together and discuss how we could go about setting up a counselling service. I work for Metro and I have broached this subject with the commissioner of social services who thinks it is a fine idea that we should have counselling services in Metro.

I have also broached it with the personnel division and they also would like to see that, but they say there are problems. You have problems also about this issue that we are not discussing here. But I think it is a far better solution to the problem to deal with it as an illness which can be treated, rather than as a political problem. It is not. They have spent millions and maybe billions of dollars on promoting it as a political problem, but it is not.

There is not a politician in this room that is going to be able to assist in the cure of one homosexual, unless of course you have that desire to approach them on a one-to-one basis, talk to them about it and bring them to a realization of what they have to do. It is all in this material, what they have to do in order to get on the right road to recovery. That is what we should be looking at.

10:40 p.m.

As you can see, I am only addressing myself to this thing about sexual orientation. My own union has sexual orientation in the preamble to the constitution and I am now looking at the possibilities of withdrawing my support from that union on religious grounds. I think that is all I want to say.

Ms. Copps: Mr. Pritchard, you seem to be highlighting the encroachment of secular humanism in the school system versus

the point of view that might be taught in Christian schools or in nonsecular schools. How do you then account for the fact that a number of religious organizations, including those which represent most of our major religions, have spoken out in favour of inclusion of sexual orientation in the code?

Mr. Pritchard: I did not know that, and I do not know why they have done that.

Ms. Copps: If you want to take a look at the public support for gay rights, there have been a number, including the Canadian Council of Christian Jews, the Canadian Council of Churches, Catholics for Social Change, Christian Movement for Peace, the Ontario House of Anglican Bishops, the Ontario Provincial Council of the Anglican Church, the United Church of Canada, et cetera.

Mr. Chairman: Is this of benefit to the committee, or is this of benefit to Mr. Pritchard?

Mr. Pritchard: I do not feel there is any reason to answer that question.

Ms. Copps: I have a question that he is bringing this argument to a discussion of secular humanism versus religiosity.

Mr. Pritchard: I only mentioned secular humanism in passing. I am only concerned with the homosexual problem. I am not concerned about secular humanism in the schools.

Ms. Copps: On your second point you are saying that homosexuality is a disease which should be treated and therefore should not be included in the code. How do you account for the fact then that, in his wisdom, the minister has seen fit to include those people who have been affected by different types of physical and mental illnesses within the confines of the code, if in fact disease, or those kinds of illnesses should not be included under any umbrella?

Mr. Pritchard: You will have to ask him. I do not know.

Ms. Copps: Thirdly, are you here representing Positive Parents of Ontario?

Mr. Pritchard: I am a member of Positive Parents of Ontario and I am here representing me and my family.

Ms. Copps: The reason I asked that is because you are included on the agenda as a member of Positive Parents of Ontario. Have you ever been involved in any way, shape or form in a political campaign in the city of Hamilton?

Mr. Pritchard: No.

Ms. Copps: Have you ever had any knowledge of any candidates who have run for political office in the city of Hamilton?

Mr. Pritchard: No.

Ms. Copps: Then how does your organization publish literature which attempts to construe that they have prior knowledge of candidates in the area of Hamilton?

Mr. Pritchard: You will have to ask the president that question.

Mr. Chairman: Thank you very much, Mr. Pritchard. We will make sure that the information is available to all the members of the committee.

Mr. Pritchard: I have this letter that I want to leave with you.

Mr. Chairman: Also, Mr. Newton, we will certainly circulate your information to all members of the committee.

I have one note on the slide presentation that was requested from Mr. Qaadri, which was in connection with the Ontario Advisory Council on Multiculturalism and Citizenship. There will be a notice tomorrow morning that this will be shown tomorrow afternoon at 2 p.m. in the room next door.

Ms. Copps: On a point of order, is Mr. Newton going to appear before this committee, or is he not?

Mr. Chairman: Mr. Newton made it very clear that he is not and he asked that this be entered.

Ms. Copps: Well, if he is entering something for discussion and if he is asking that a representative come and speak on behalf of Positive Parents of Ontario, I think that we, as legislators, should have the opportunity to ask questions.

Mr. Chairman: I believe it is the other way around. The meeting is adjourned.

The committee adjourned at 10:47 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

THE HUMAN RIGHTS CODE

WEDNESDAY, JUNE 10, 1981

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Harris, M. D. (Nipissing PC)
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✓ Substitutions:

Copps, S. M. (Hamilton Centre L) for Mr. Kerrio
O'Neil, H. P. (Quinte L) for Mr. Riddell
Renwick, J. A. (Riverdale NDP) for Mr. Laughren

Clerk: Richardson, A.

Assistant to Clerk: Van Bommel, D.

✓ From the Ministry of Labour:

Elgie, Hon. R. G., Minister

Witnesses:

✓ From the Ontario Advisory Council on Senior Citizens:

Epstein, N., Member

Upshall, A., Vice-Chairman

✓ From the Ontario Status of Women Council:

Dranoff, L. S., Vice-Chairperson

Gordon, L., Chairperson

From the Ontario Committee on the Status of Women:

Hosek, C., Member

✓ Sullivan, L., Chairperson

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, June 10, 1981

The committee met at 10:10 a.m. in room No. 228.

THE HUMAN RIGHTS CODE
(continued)

Resuming consideration of Bill 7, An act to revise and extend Protection of Human Rights in Ontario.

Mr. Chairman: I call the meeting to order.

We have before us this morning the Ontario Advisory Council on Senior Citizens and Mr. Epstein and Mr. Upshall.

Mr. Epstein.

Ms. Copps: It is my understanding that the rules of the committee were that anyone who responded to the advertisement within a prescribed period would be allowed to, number one, present a brief and, number two, appear before the committee. Is that correct?

Mr. Chairman: I believe so. That was my understanding.

Ms. Copps: I am aware of at least two individuals who have phoned the office of the clerk and been told that they cannot appear because the number of appearances is out of--

Mr. Chairman: No.

Ms. Copps: I can give you at least two individuals. One phoned your office at 9:30 and was told that he could not appear because all the spaces were filled, they already had 40 people and they were not going to be able to schedule any more.

Mr. Chairman: He could not get on?

Ms. Copps: Right. I have at least two individuals. If I have found out about two individuals, there must be others.

Mr. Chairman: There has been no time frame. I talked to the clerk. He has an ongoing list. It has now gone to the end of June, which is beyond the schedule you have and it is an adding list. It is at 34 and growing every day.

Ms. Copps: I have at least two individuals who, by phone call, were told that they could not appear before the committee.

Mr. Chairman: I am sure if you bring--

Ms. Copps: I am sorry, but if you like I will bring them here, because one phoned this morning at 9:30 and was told by a woman in your office that he could not appear because the briefs

were filled, they had already scheduled till the end of June and they did not have any more.

Mr. Stokes: Perhaps, Ms. Copps, you could go back to them and tell them that just is not so.

Ms. Copps: The reason I am concerned about it is that if I know two individuals who have been told that, there may be others who do not bother to pursue it.

Mr. Chairman: Ms. Copps, if that occurs, there is likely some misunderstanding. Perhaps they cannot appear in June; indeed, we have no more room in June, even going beyond the schedule you have.

If you bring those names to the attention of either the chair or the clerk then we will make sure that any misunderstanding is cleared up.

Ms. Copps: I just find it hard to believe that a misunderstanding occurred in two separate instances, one last week and one this morning. I wonder if there have been other individuals so informed that I do not know about and have no means of contacting.

Mr. Chairman: I think perhaps the wording has to be looked into--"cannot appear"?

Ms. Copps: They can appear at any time at any place, but they have been told by the person who responded to the clerk's phone that they could not present a brief because the number of places was already full. That was told to two separate individuals.

Clerk of the Committee: I do not want to get into this.

Mr. Chairman: I do not think we have to get into it. You have made your point. The chair has answered. The clerk has answered.

Ms. Copps: How long is the committee prepared to sit?

Mr. Chairman: Until we hear all the briefs, Ms. Copps.

Ms. Copps: How can you say you are prepared to sit until you hear all the briefs when it is obvious by telephone conversations that you are limiting the appearances of people? I can prove that you had two separate individuals who have been informed that they could not present a brief. They are not related to each other. There is no conspiracy.

Mr. Chairman: I think you have made your point and I think I have answered your point. There has been no limitation of the time.

Ms. Copps: How many other people have tried to put in briefs who cannot, because they were so informed and did not go to their MPP?

Mr. Chairman: The Ontario Advisory Council on Senior Citizens. Mr. Epstein?

Mr. Epstein: Thank you, Mr. Chairman and members of the committee.

I would like to introduce Mr. Alan Upshall, who is one of the vice-chairmen of the Ontario Advisory Council on Senior Citizens. I am a member of that council.

I would like to introduce the council to those of you who have not encountered us previously. We were created by order in council in 1974 to advise the government through the Provincial Secretary for Social Development on the needs and policies affecting the lives of senior citizens in Ontario.

The council is composed of approximately 20 individuals from across Ontario, all with one common characteristic--deep concern for the future of Ontario's senior citizens. Except for that common characteristic, the council's members span many different economic, political and spiritual boundaries and, as is quite obvious today, many age boundaries.

Our proposal for amendment to the Human Rights Code is simple and straightforward. It is the definition of age. The presentation we made in 1975 to the then existing Ontario Human Rights Code Review Committee is the same presentation we are making today--that the Human Rights Code be amended to provide coverage for all adults aged 18 years of age or older.

The Ontario advisory council's position was outlined in the position paper on the abolition of mandatory retirement, which we included as appendix A in the paper before you. I will condense this paper for our presentation today.

The Ontario advisory council's concern in this area stems from its mandate, its basic goal, and that is to create a province in which it is possible to grow old with dignity and with a sense of usefulness, to have a choice of one's own destiny and to live in a place where people have a concern for one another, a place where rejection is no longer acceptable.

To achieve this, society must learn that the overwhelming majority of senior citizens have not outlived either their value or their ability to actively contribute to our society. Senior citizens are and desire to be in the future, integral and participating members of every community in Ontario.

The Ontario advisory council believes that senior citizens should have a choice. In this case, the choice we are supporting is the choice of when to work and when to retire.

Council is aware that by amending the Human Rights Code from the present provision, which reads, "Age is defined as the protection between the ages of 40 and 65," the amendments before this committee are that the change be to "anyone 18 until 65." Our proposal is that the definition of age be expanded to anyone 18 or over. There should be no upper limit.

Changing the code would ensure that senior citizens over the age of 65 could not be refused employment or any service, accommodation, or other protection under the Human Rights Code of 1981 merely because of their age. Those who are looking for second careers and widows looking for ways of supplementing their income, would not be refused employment merely because of their age. Those who are 67 or 82, could not be refused a job on the basis that they are too old.

Secondly, changing the definition of age would abolish mandatory retirement in this province. Instead of compulsory retirement dates, a person's retirement date would be flexible.

By way of background, one must look at what is involved in making the decision to retire. We have always assumed that age 65 is a convenient way of doing it. We are now learning that reasons for retiring, especially among those who retire early, are quite complex and personal.

There are many factors that go into an individual's decision to retire. The age, sex and income of any particular population will have an impact on how that population retires. Cultural values, governmental policies and even automation will affect the individual's decision. How an employer views ageing and retirement and how older workers fit into a particular company's plans will also effect the decision of when to retire.

Of course, the personal factors of finance, health, family, attitudes and expectations for the future have a bearing on that important decision in a person's life.

We must look seriously at the issues of inflation and income maintenance as being very profound factors on an individual's decision to retire. When an individual is forced to retire at some age, be it 60, 65, 70 or even 75, however arbitrary that age may be, the decision is at least partially out of his control.

10:20 a.m.

Age itself should not be the determinant of retirement. Individual capabilities, individual attitudes, a person's health and finances are not directly a function of age. A person at 50 may be more prepared for retirement than another at 80. The complexities and value decisions required for any retirement decision cannot be resolved by arbitrarily selecting 65, or for that matter, any other age.

By way of background, in 1975 the council commissioned a report by the Environics Research Group to examine the effects of altering the age of compulsory retirement. That report was relied upon in the submission in 1975, as set out in our position paper, and is relied on for the presentation this morning.

With regard to mandatory retirement, the advisory council supports the abolition of mandatory retirement for senior citizens across Ontario. This has been the position of the advisory council since 1975, and it is contained in the position paper attached hereto. I might refer members of the committee to the summary which is page eight of appendix A, which I will just read for you:

"The Human Rights Code should be a document declaring and protecting human rights on a broad scale, not a document which enumerates exceptions to its protections. The human resources we have available in seniors can and must be utilized more fully. The right to work must be guaranteed for those who work and refuse to retire. The right of the individual to a choice must be recognized. The myths and attitudes of society towards aging, the aged and death, must be changed so that seniors are no longer isolated from society but are useful, effective and responsible members of our society.

"Very clearly we believe that retirement is unemployment, even if the statistics choose to classify it otherwise. The flexibility of retirement would be in line with our respect of the individual's right to choose his or her own lifestyle and the expense of maintaining seniors as dependants will soon become overly burdensome."

Since the presentation in 1975 the council's position has been further strengthened by the actions around the world, by the letters of support and by the encouragement we have received as contained in other briefs.

In 1977, the Ontario Human Rights Commission released its report, *Life Together: a Report on Human Rights in Ontario*. The commission adopted the position of the Ontario Advisory Council on Senior Citizens, saying that the definition of age should be changed from 40 and over to 65 or less, from that definition, to 18 and over--exactly as we are proposing to you today. That is reported in appendix B, attached hereto.

In 1975, two provincial governments had previously abolished the age 65 limitation in their human rights codes. Those are New Brunswick and Manitoba, specifically. Cases in each of those provinces have gone to their courts of appeal and have upheld the abolition of mandatory retirement in those two provinces.

Recently, the Quebec government introduced a government bill to prohibit mandatory retirement. The law would provide that any employee can remain at work after his sixty-fifth birthday, unless the employer can prove that his health is no longer compatible with the job.

In 1978, the United States raised the mandatory retirement age for workers to age 70, and it abolished mandatory retirement at any age for federal employees. That legislation has been in force for the past two years. One of the provisions of that legislation was that the government would make a report on the effects of that legislation. No adverse effects have come to light since that legislation was introduced, and it was introduced on a large scale, to a much larger audience than would be affected by the Ontario Human Rights Code, I assure you--and no adverse effects have been reported to date.

We must look, again, at public opinion, and the latest Gallup poll which we have enclosed for you as appendix D now reports that those supporting the abolishment of mandatory retirement are close to two thirds. Almost twice as many disagree with the maintaining of mandatory retirement as agree with it.

The Croll commission, the federal Senate committee on retirement age policies, concluded that mandatory retirement based on age was an infringement on human rights, an economic waste, and involved misconceptions about the relevance of age. It recommended that mandatory retirement be abolished.

In Ontario, Mr. Leluk introduced two bills, in 1978 and again in 1980, to raise the mandatory retirement age to 70 years of age. In 1978 this bill received second reading and it was defeated. In 1980, the bill received second reading which was approved by the Legislature. It did not come to committee as the election was called.

I have quoted some of the quotes of that member, who is now the Minister for Correctional Services, who introduced the bill. There was certainly a lengthy debate both in 1978 and 1980 and we have reviewed those debates. And while that bill involved amendments to other acts, such as the Employment Standards Act, the Pension Benefits Act, the Public Services Act, the primary provision was the amending of the definition of age in the Ontario Human Rights Code.

Finally, the present Minister of Labour, Mr. Elgie, made a statement at approximately the same time as Mr. Leluk's bill in 1980 was being introduced, that he would be introducing a measure to amend the Ontario Human Rights Code to raise the definition of age to age 70, which I have appended as appendix E to our brief. While we have written to Mr. Leluk explaining that we felt there were limitations in only raising the age to age 70, and while it may be an interim step, the council's position has been and it remains that mandatory retirement must be abolished completely.

We recognize that certain members in the House have made representations that abolishing mandatory retirement would take away the last safeguards for senior citizens and their pensions, that when we abolish mandatory retirement we will begin to infringe on the rights to receive pensions and whatever. We feel that the issue of pensions is totally alien to the issue before the committee here today. We are dealing with an issue of choice.

We have made presentations to the royal commission on pensions. We have made presentations to the Treasurer and the Ministry of Revenue regarding pensions and we feel that both public and private pensions will certainly be affected. The Canadian Life Insurance Association has stated very clearly that adjustments can be made in private pensions. Government is aware that changes can be made in public pensions as well, should they be required. But we feel that the change must be made, and the choice must be given to the individual.

It is now obvious that the opposition to mandatory retirement is increasing, and it is the council's position that changes must be instituted quickly. The first change must be to the Human Rights Code, and as the Human Rights Code is being revised at present, it would be negligent of the Legislature to ignore the cries for change, and pass the code without amending the definition of age as has been recommended by the advisory council.

10:30 a.m.

If I may just add a personal note in closing. My involvement in the issue of mandatory retirement began with my involvement with the senior citizens' council. I began to recognize that ageing was a matter very much of mind and of circumstances, and not a matter of chronological age. There are many seniors, members of the council and outside of the council who have a great deal to contribute to this province, who have a great deal to contribute to their jobs, and have a great deal to contribute to the younger generation.

In trying to talk to younger people about the benefits and the fact that senior citizens do have a lot to contribute, I have run across one very obvious reasoning error, in my view. That is, I have run across people who say: "Well, why then do you not find senior citizens in the work place? Why do you not find senior citizens continuing to work at their jobs? Why are they retiring if they have so much to contribute?"

I only have one answer, and that is, history and the mandatory retirement laws. I think that if we are going to attempt to change the attitudes of the younger people towards senior citizens, we have to abolish the laws that tell senior citizens they have no choice in what their future is going to be. We have to treat seniors as competent adults, who have the wisdom and the experience of the years to make the right decision at the right time. Whether that is right for them is the important decision.

We have many competing values. The unions have interest in this. The employers have interest in this. Younger people have interest in this. The right of the individual must be respected.

On behalf of the chairman of the Ontario advisory council, Mr. Doug Rapelje, and the members of the Ontario Advisory Council on Senior Citizens, I wish to thank the committee for their consideration of the brief of the council this morning. Thank you.

Mr. Lane: I happen to be one of those that has a little slogan that says, retirement at 65 if necessary, but not necessarily retirement at 65, and I support Mr. Leluk's bill. I do have some difficulty with over the 70 situation though, because as you mentioned, there would be more senior citizens coming on stream as time goes on. That is very correct. There are something close to a million senior citizens in Ontario at this point in time, and 20 years from now there will be two million.

People like myself, who are getting along in years, have only paid into Canada pension for however many number of years the Canada pension has been around. But my son and his family will pay in from the time they start to work. As I understand it, I can only defer the Canada pension until age 70. I must take it at 70. So we are not really saving society any money.

If the Canada pension must be paid out at 70, then it seems to me that our younger generation is going to have a lot of things to pay, the things we have on stream now and the things that will come on stream over the next two decades, which means that they

are going to be burdened with a lot of responsibility. I just wonder if once the Canada pension becomes mandatory and you have to take it at 70, which I understand it is now, then are we really saving any money. Maybe we think in terms of senior citizens being available for advisory positions and so forth, because I think in the 70s and even the 80s, many senior citizens are very capable of being advisers to companies.

Mr. Stokes: Is there a question there somewhere?

Mr. Lane: I am just trying to get his reaction to the matter of age 70 rather than forever.

Mr. Upshall: Sir, if the question is whether or not you are going to save money, whether or not the country is going to save money, there would be a very definite saving if more people worked beyond 65, in that obviously there would be fewer people claiming the guaranteed income supplements and, in Ontario, the guaranteed annual income system payments. They would not need it because they would keep their income level above those figures longer.

Mr. Eaton: The fact that they are being productive too would add to the general economy.

Mr. Lane: What about the unemployment situation? How we are going to supply teaching, for instance, where we have an overabundance of teachers right now. If they can teach until they are 80, assuming that their health is good, what is going to happen to the younger teachers?

Mr. Upshall: I realize the unemployment situation has to be considered. Yet at the same time, aren't we hearing recently that there is going to be a shortage of labour in Ontario during the present decade? The last date I saw quoted was 1985. Certainly there is now a shortage of skilled labour in certain trades.

Fortunately or unfortunately, the skills in certain trades lie in the older generation. That does not say we should not teach the skills to younger people; obviously we should. But at the moment the resources lie within the older group.

Mr. Lane: I personally think we would have less bankruptcy in this country if we had older people acting in an advisory capacity to new companies and people without experience and so forth. However, I do have some concern over how we could handle the situation if there was no age limit at all. I certainly would be very supportive of 70.

Mr. Epstein: Mr. Chairman, if I may reply, I think we are also dealing with the problem of semantics. Statistics Canada has never dealt with senior citizens by calling them unemployed. After 65, if you are trying to find a job, you are not classified as being unemployed, necessarily.

When the argument comes forth that when we keep senior citizens in their jobs we are kicking younger people out, I think we have to say we are replacing one level of unemployment for another level of unemployment. I think we have got to look at the

question of whether we should be sacrificing the older people at the expense of the younger people, necessarily and whether the younger people really would want that. If they knew that someone was forced to leave in order to provide them with a job, I think a lot of younger people would feel very reluctant about taking that job.

Also, I think we have to recognise what is happening in a great number of larger organizations. At the top of the pyramid, if some is of it removed, supposedly the blocks shift all the way down so that there is an opening at the bottom. In many companies nowadays that are cutting back by attrition, the blocks move and somewhere in the middle two blocks take the place of three blocks, and no one at the bottom gets a new job. So younger people are not getting the benefit of somebody leaving at the top.

Mr. Renwick: Mr. Epstein will be interested to know that the legislative library research facility of the assembly prepared a paper on the pros and cons and the issues involved in mandatory retirement. I would be glad to see that you get a copy of that. I think we should make certain that each member of the committee gets it--it was sent as a notice to everybody that it was available--because it is a fundamental question.

The other comment I wanted to make is that our caucus and our party does not have a specific position on mandatory retirement as yet, but it is one of the top items that is going to be considered by our own internal assessment this summer. We hope that by the time we get to clause by clause our caucus will have a definitive position on the question. It is a major concern to us and I thought you would like to know our position on it.

Ms. Copps: The question I wanted to ask deals more with application. If this committee or the House recommended that we raise or abolish the mandatory age, does your committee have any precedent as to how it would be phased in? I think if you said tomorrow, "Abolish mandatory retirement," it would cause some problems in business and for individuals across the province. Do you have a phase-in program?

10:40 a.m.

Mr. Upshall: We have not gone so far as to develop a phase-in program. Our only example by which we may go is the United States' legislation. They have had two years' experience and apparently it is working well. We are shortly going to be able to draw upon our neighbouring province, Quebec, because they have just abolished mandatory retirement. Certainly there will be adjustments to be made.

I believe another thing we have to remember is that just because mandatory retirement is abolished, by no means is everyone going to want to continue to work after 65. I would think the percentage of people who would willingly continue to work after 65 is comparatively small. They would be those people who are workaholics by nature and it those to whom it is financially necessary to continue to work.

Ms. Copps: You mentioned the tremendous growth in the number of older people and that as we grow older the burden on society to support nonemployed seniors becomes greater.

Do you have any actuarial comparisons? If the status quo remained, what would the situation be in 1990 with respect to our financial burden and what would it be if we lifted mandatory retirement? How many people would you expect it would be? Do you have any statistics showing how many people would take advantage of carrying on in the work force?

Mr. Upshall: There is another factor that has not yet been mentioned that derives in the population of seniors and depending on which demographic expert you listen to you, get various percentages for the year 2000 and for the year 2031 and so on.

The other factor I want to mention is that according to the commission on the status of pensions, which made its report early this year, as you know, the people who are dependent upon the work force will remain relatively the same until the year 2010.

The people who are dependent on the work force are those people who are below working age and those people who are above working age. So the under 20s and the over 65s, taken together, will remain relatively the same until the year 2010, after which there will be an upsurge of dependent people compared to supporting people. So we have a period of about 30 years in which to make adjustments.

Mr. Epstein: From statistics that we have read we find that approximately five to 10 per cent of seniors who are working would be interested in continuing in their specific jobs and that is the expectation as far as the number of people who would continue to work if they were given the choice after age 65, spread over the whole realm of senior citizens. As far as what it will be, we can only guess.

Ms. Copps: It might also be interesting to know about those who are forced into unnecessary retirement. Often it can wreak havoc with their mental and physical health and I just wonder what kind of a cost that is also to the health care system.

Mr. Epstein: The American Medical Association has found that it is one of the key factors. There is a very high mortality rate at age 66 and 67. Approximately a year to two years after people retire there is a very high mortality and they relate that directly to the loss of jobs.

A job is a very important factor in an individual's life. We do it every day, we have friends at work, it is our social contact and it is our self worth. The value of a job is a very important thing to most people, and the loss of it is a very striking thing.

One of the things we have been trying to do in the last number of years to alleviate that is to encourage pre-retirement courses, but that is only a Band-Aid procedure. This is the real change that is needed.

Mr. Stokes: I just have two brief questions and one of them deals with the makeup of the advisory council. How many people are on the council representing the views of seniors in northern Ontario, and where are they from?

Mr. Upshall: One is from Kapuskasing and one is from Thunder Bay. There are two from the north.

Mr. Stokes: Who are they, do you know?

Mr. Epstein: Madame Cecile Lanteigne is from Kapuskasing and Mrs. Florence Johnston from Thunder Bay. She happens to be our vice-chairman and the other is a vice-chairman as well.

Mr. Stokes: The second question I have is whether there are any statistics to prove that seniors who stay in the work force enjoy better health as a result of remaining active as opposed to those who retire, say, at age 65, and lead a more sedentary life? Is that reflected in their overall health?

Mr. Upshall: Any doctor I have heard talking about what to do after you retire has stressed the importance of remaining active. I must admit that I have friends the same age as I who do nothing more strenuous than taking their wives to the hairdresser's and they seem to be as well as one would hope to be.

I think it depends on the makeup of the individual whether physical activity is necessary. The rocking chair syndrome seems to suit some people, but in the main I think the odds are in favour of what you do not use, you lose. If you remain inactive, you are going to lose the ability to become active.

Mr. Chairman: Thank you very much, Mr. Epstein and Mr. Upshall. We thank you for your brief to us and I assure you, when we come to that section I know you are interested in, that your presentation will receive, I am sure, a considerable amount of consideration by this committee. We thank you very much for appearing before us this morning.

The Ontario Status of Women Council; Linda Silver Dranoff.

Ms. Gordon: We are Linda Silver Dranoff, the vice-chairperson, and Lynne Gordon, the chairperson of the Ontario Status of Women Council.

Dr. Elgie, Mr. Chairman and members of the committee, just before I start, I would like to say that we would lend our support to the Ontario Advisory Council on Senior Citizens on the mandatory age, supporting mandatory. We are a little concerned and we will discuss it later in our brief about the age 18, the lower age. We would like perhaps to discuss a lower age than 18.

We feel it is very important, particularly for women, because women, sadly, have entered the work force later in many cases and have had no pensions. They say on the whole we live longer, so it would have great impact on older women if they had to leave the work force earlier. Also, there are many people who really just need to work, work at an optimal level, rather than workaholics.

Dr. Elgie, Mr. Harris, members of the committee, we welcome this opportunity to appear before the standing committee on resources development to participate in this historic debate on the revision of the Ontario Human Rights Code. I am Lynne Gordon, chairperson of the Ontario Status of Women Council, and with me is Linda Silver Dranoff, vice-chairperson of the Ontario Status of Women Council. It is my intention to make a few opening remarks to the committee and then to turn the discussion over to Linda, who will make specific comments on the proposed code.

May I take this opportunity to congratulate the new members of this committee and those who have been recently elected to the provincial Legislature.

The Ontario Status of Women Council comprises 14 part-time members, including myself and the vice-chairperson. Members of the council represent all regions of the province. For your information, the names of the council members and the regions they represent are included in your brief.

10:50 a.m.

The Ontario Human Rights Code is unquestionably the most important instrument in Ontario through which women, and of course all Ontario citizens, can achieve a more equal place in our society. Since 1975, International Women's Year, the need for improvement of the status of women has never been far from the front pages of most of our major newspapers. I think you will agree that those who said a few years ago that the women's movement had run out of steam, are now probably thinking that they have been hit by a locomotive.

I want to take a brief moment to outline the continuing need for affirmative action and expanded human rights protection for women. Women have always been disadvantaged when they sought accommodation, often because they were single parents. We congratulate the government for removing most of the obstacles that existed in the previous human rights code relating to marital status.

We know also that the government has included a new ground of public assistance within the accommodation section, and we are pleased with this inclusion. We will have more to say about this later in our remarks. With regard to employment, the statistics are clear. Women still continue to make far less than men do, often when they are doing exactly the same job. This has been proven again and again, and there is no question, I think, in anyone's mind as to the need for strong and stringent measures to protect against these inequities.

We must use every legal tool available to us to advance women. Many of our remarks relate to points we have outlined in our brief entitled, Employment Strategies for Women in the 1980s, which has been supplied to you. We are pleased to see a specific section which attempts to define and codify sexual harassment. We have some suggestions regarding this section.

Last year, 34 per cent of the cases which were "closed" such

as were dealt with by the Ontario Human Rights Commission, had to do with grounds of sex, marital status or both. Because of the number of complaints and the potential for many new complaints in an expanded code, I would like to suggest that the committee and the minister consider appointing a woman's commissioner as a full-time position within the commission, similar to Dr. Ubale's position as the race relations commissioner. That commissioner would be available on a full-time basis, would be a high profile person and would be known throughout the community as a person who is an advocate of women's rights.

At this point I would like to introduce Linda Silver Dranoff, a lawyer on our council, and vice-chairperson of the Ontario Status of Women Council, who will address the major themes and the technical legal points of our presentation.

Ms. Dranoff: It is a pleasure and a privilege for me to have this opportunity to address the committee. Getting right to the code, we found some concern with the preamble. We are recommending that the phrase, "contrary to law," that appears in the second "whereas" in the preamble, be removed, for the reason that a preamble, it appears to us, represents a statement of principle.

There is a need for a strong statement of principle that it is public policy in Ontario to recognize that every person is equal in dignity and worth and to provide for equal rights and opportunities without discrimination. If you add "without discrimination that is contrary to law," it appears to me that you are permitting discrimination within legislation and within law.

Since this is a preamble, it would appear to be important to state that it should be public policy in Ontario to recognize the equality and dignity of persons, whether the Legislature has got around to recognizing that as yet within a specific piece of legislation.

We also would suggest that since the UN charter, the Universal Declaration of Human Rights, is referred to, we must give some recognition to the present discussions federally on a Canadian charter of human rights. Just as we are wishing the Ontario Human Rights Code to be in accord with the Universal Declaration of Human Rights, we should also state that we would wish the Ontario Human Rights Code to be in accord with the Canadian charter of human rights which is proposed.

We are also recommending that there be a statement of principle within the preamble that regular revision and review of the code be made therefore to keep it in accord with future developments federally, or a recognition in the community of the rights of persons.

We note that there are, in the first part of the code, prohibitions which relate to various types of applications, and that not all types are equally applicable. For instance, public assistance and record of offences appear as prohibitive grounds in some respects but not in all. What we are recommending is that all grounds should be applicable throughout the code.

Referring now to page three of our brief, it appears from a reading of the code that there could, potentially, be very serious problems in some of the wording. While on the surface it may appear to be wording difficulties, in effect it creates a substantive problem in the interpretation of law. I would refer you to sections 2, 4 and 5 of the code.

Section 2 says, "Every person has a right to equal treatment in the occupancy of accommodation." That does not say that every person has a right of equal treatment "to" the occupancy of accommodation. Using the word "in" instead of "to and in" creates the situation where it could be interpreted that a person has a right to equal treatment once they are occupying the accommodation, rather than a right to equal treatment in the choice of whether or not they shall be allowed to occupy the accommodation.

The same difficulty presents itself with respect to section 4, and I would direct you to the specific wording of the act which says, "Every person has a right to equal treatment in employment without discrimination." That, it seems to me, could clearly be interpreted as saying that every person has a right to equal treatment while they are already employed, once they are employed. Because it says, "in employment." It does not say every person has a right to equal treatment "to" employment without discrimination. So the whole area of recruitment could potentially be a very serious problem if the act is left worded the way it is.

I am sure that the draftsmen who drew up the code could not have intended to take away from Ontario citizens the rights that have been granted to them in previous Ontario human rights legislation. It seems to me that there is, therefore, no protection with respect to recruitment, promotion and training, when you just say a right to equal treatment "in" employment. This should be very clearly specified and reworded.

The same problem exists with respect to section 5, where it now says, "Every person has a right to equal treatment in the enjoyment of membership in any trade union, trade, or occupational association or self-governing profession." But first you have to be a member and surely we want to give the right to equal access to membership in any trade union, trade, occupational association, or self-governing profession.

So I think that, members of the committee, with respect to sections 2, 4 and 5, the question of access to, with respect to employment, recruitment, promotion, training, are very important areas that would require some wording changes in the act to make it clear.

The next section of the act that concerns us is section 6, which is the section on sexual harassment. Putting a section in the Ontario Human Rights Code to protect individuals from sexual harassment is, of course, applauded by the Ontario Status of Women Council. We find some difficulty with the way it is set up in the code. It is our view that the wording that has been used could create serious problems in interpretation and enforcement.

We would point to three specific wordings. One is the word "persistent." The way it is worded at present, it seems to me, it would be impossible for anyone to make a complaint that could be properly dealt with.

Section 6(a) states, "Every person has a right to be free from a persistent sexual solicitation or advance made by a person in a position of authority who knows or ought reasonably to know that it is unwelcome." That means to be able to enforce that, first you would have to prove the person who is accused would have to know, or ought reasonably to know, that it is unwelcome. That is the first stage.

11 a.m.

Then you would have to prove persistence. I do not believe there is any interpretation of the word "persistence" in law that is going to help us to know whether or not the solicitations have to be twice, five times, 10 times or 20 times, to be able to be called persistent.

Let's say the male member of the personnel department or executive tells the female who is applying for a position that she is very attractive and that one of the job roles she will have to fill will be a sexual one; that is something that is a sexual harassment clearly. I think anybody would identify it as such. But it could not be identified as persistent because it happened only once. Whether he ought reasonably to have known that it was unwelcome is something that one cannot readily interpret in a situation like that. That is the kind of situation where, for instance, this code would not really answer the situation.

The second problem is the use of the wording "solicitation" or "advance." Going back to my example, the word "solicitation" or "advance" does not comprise all of the situations of sexual harassment. In that situation of recruitment, the male executive interviewing the female might, instead of soliciting her for sexual purposes, make comments which are, to her, unwelcome; perhaps showing her photographs, perhaps saying something about her personal appearance. That would be harassment. It would not be a "solicitation" or "advance," necessarily.

It seems to me, and it seems to the committee, that the word "harassment" used in the context of the code, might more clearly deal with these potential situations that arise, rather than limiting the problem to "solicitation" or "advance."

The third problem in that section on sexual harassment is the use of the term "person in a position of authority," because I do not think that is something which could be clearly interpreted by persons who have to interpret it. It seems to me the point one wants to make is that a person in a position of authority has the power to affect the person harassed with economic consequences. Therefore, the fact that the person can be affected with economic consequences should be part of the definition of person in authority.

The other part of the definition should be that that person

has the authority to penalize or prevent the conduct. So, it seems to us that "person in a position of authority" should comprise those two aspects in its definition in order to clearly make that section deal with potential situations of sexual harassment and enable the Ontario Human Rights Commission to deal adequately with that problem.

Proceeding with our brief, through page five, in the order in which we have read the Ontario Human Rights Code, we have some concerns with respect to the definitions section in the code. First, age, section 9(a)--Ms. Gordon, our chairperson, has mentioned our policy with respect to that and certainly we agree with the position of the Ontario Advisory Council on Senior Citizens--we feel there should be no limitation of the age of 65 in that section, and that "age" be changed to eliminate the upper limit of age 65.

With respect to section 9(b), we are recommending that the recommendation in Life Together--and it is our position that the recommendation in Life Together should be added into the code at this point; that height and weight should not be grounds for discrimination in the same manner as a physical disability is not a ground for discrimination.

With respect to section 9(e), the definition of "equal" quite floors me. Even as a lawyer quite accustomed to extended and difficult and awkward wordings I must say that this takes the cake, as far as I am concerned. I find this word quite difficult to deal with.

It seems to me it would be easier to leave a definition of "equal" out of the code and simply rely on dictionary definitions, rather than try and deal with a definition that says, "'equal' means subject to all requirements, qualifications and considerations that are not a prohibited ground of discrimination."

Mr. Stokes: It is probably drafted by a lawyer.

Ms. Dranoff: Probably.

Hon. Mr. Elgie: Different law school.

Ms. Dranoff: I am sure that the lawyer who drafted it made every reasonable effort. I think, however, there are some words which are sometimes better left undefined.

The definition of "family," in paragraph 9(f) is limited to persons in a parent and child relationship. I would think that the definition of "family" should be extended beyond that at least to include the adults in the family. We are recommending that "family" be expanded to include people living in a kinship relation.

Additional definitions are recommended by the Ontario Status of Women Council; first of all, that all the definitions in section 9 be applicable throughout the code. For some reason which I am unable to understand, section 9, which defines the various wordings, applies only to part I and part II, but does not apply to the other sections of the act. And there are only one or two

definitions applicable to the other parts of the act, so it seems to be that the same definition should apply throughout the act.

We are recommending that whenever the word "person" is used throughout the code, the words "class of persons" should be added, either within each section, to say "person" or "class of persons," or to add a definition to section 9 to indicate that wherever the word "person" is used, it also refers to "class of persons." Therefore, in section 4, for instance, where it says, "Every person has a right to equal treatment in employment," it would say, "Every person and class of persons has a right to equal treatment in employment." This would mean that women, as a class, would be able to bring actions within the context of the Ontario Human Rights Code.

We are further suggesting that the word "employer" include an employer's agent and an "employee" should include someone applying for employment. Perhaps that would help meet the problem which we have raised with respect to section 4.

With respect to section 10 of the act, that is one of those sections, of which there are a number, where acceptable discrimination seems to be stated. That section says that there can be discrimination on all grounds where "the requirement, qualification or consideration is a reasonable and bona fide one." We would recommend that the word "necessary" be added to "reasonable and bona fide" because it may be that it is reasonable and it may be that it is a good faith act to, for instance, exclude a woman from a certain type of employment; but it may not be necessary. We would also recommend that the onus should be on the employer to prove that the discrimination is both bona fide and necessary.

Section 14 we would want to apply to a class of persons, rather than simply persons or groups. Section 14 is the section which indicates that it is not discrimination to have an affirmative action program for persons who have been disadvantaged by a history of discrimination.

11:10 a.m.

At the moment, the section refers to disadvantaged persons or groups. It seems to us that it should be made to accord with the definition in a similar section, 26(c) of the act, which also talks about affirmative action programs and relates them to a group or class of persons. We would recommend that the same terminology be used when the same type of program is referred to in section 14.

We are also recommending that it should be mandatory upon the commission, rather than discretionary, to deal with affirmative action programs, within the context of section 14. It would be very important, in our submission, that the Ontario Human Rights Commission fulfil a monitoring function with respect to affirmative action programs under the new Ontario Human Rights Code, and have as strong powers as possible to monitor, enforce and initiate affirmative action programs. We are recommending that whatever changes in the code are necessary in order to do that, should be implemented.

Section 26(c), is referred to in the brief at page nine. We state the principle upon which we are operating that affirmative action in Ontario should be used as often as possible by the commission as a remedy for redressing the unequal position for women in Ontario society.

We are therefore proposing, with respect to section 26, where it states, "It is the function of the commission to recommend the introduction and implementation of a special plan or program to encourage the employment of members of a group or class of persons suffering from historic or chronic disadvantage," that added to that section should be words to the effect that the commission should have the power not only to "recommend," because how does one enforce a recommendation in strong terms, but to be able to also initiate the introduction and implementation of bona fide special plans to encourage the recruitment, hiring, training or promotion of members.

We are also recommending that the commission should be clearly given the power to monitor special programs over a period of several years to ensure that once a special program is implemented they have the power to maintain a continuing surveillance.

At page seven of our brief, I would also point out one further matter with respect to the affirmative action sections. At section 14(5), for some reason, the implementation of special programs is made not applicable to a special program implemented by the crown or an agency of the crown. It would seem to us that if affirmative action programs are being dealt with within the code, the Ontario government should be bound by similar rules as private corporations.

Permitted discrimination in facilities is dealt with in section 18, which is referred to at page seven of our brief. In that section equal treatment in the enjoyment of services and facilities, because of sex, is deemed not to be infringed on the ground of "public decency." It is our position that this is much too broad a term. It could be used to prevent girls from playing certain sports with boys because of alleged "public decency" considerations regarding bodily contact. Boys and girls play hockey together these days and they play soccer and other body contact sports. The previous code, it appears, did not have these severe strictures. It would seem to us that the term "public decency" should be much more clearly defined.

Section 19 deals with permitted discrimination in occupancy and allows discrimination on the basis of marital status if the occupancy is in a building that contains not more than four dwelling units, for instance, allows discrimination on the basis of sex if the owner and his family are restricted to persons of the same sex, and also allows certain permitted discrimination because of family in section 19(4).

It is our view that the only permitted discrimination in occupancy--and I am referring now, continuing at page seven of the brief--should occur when the owner is sharing bathroom, entrance or kitchen facilities, it being our position that if the dwelling

units are completely separate, there seems to be no reason to permit discrimination on the basis of sex, marital status or family.

Section 23 of the act deals with contract compliance, which would be, of course, the power of the Ontario government to enforce nondiscriminatory treatment through the use of its contracts with private commercial groups.

We would recommend that, in section 23(3), the sanction for an infringement under the act includes the possibility of an affirmative action program being entered into. Much as we agree that discriminatory treatment should be dealt with as severely as is appropriate, it appears that simply refusing to enter into any further contracts may not be a sufficient or realistic sanction, and perhaps we should add there the right to require entry into an affirmative action program.

Continuing with our brief, dealing with enforcement powers, we would recommend that the code should clearly set out the commission's power of investigation, and in section 30(3)(b), instead of the word "anything" in the second line of the section, we should be more specific. We have looked at the Saskatchewan code and have suggested some wording changes which accord with some that they have used. That is at page 10 of our brief.

We are also recommending that a power of injunction be added to that section, and that the commission should be obliged, in section 34, to reconsider its decisions on request.

The original bill that appeared in 1980, Bill 209, contained a section that said it was mandatory that the commission reconsider decisions according to certain procedures, and we are suggesting that, in accord with the rules of natural justice, that should be reinstated.

Going on to page 12, there are some wording changes that we are requesting before that, but proceeding with the more essential matters: At section 41, which deals with the penalty for breach of the Ontario Human Rights Code, we are recommending that the penalty should indicate the Ontario government considers breach of the code to be a serious offence and we are suggesting that \$25,000 as the maximum penalty does not indicate a sufficient degree of seriousness.

The Canadian Human Rights Act, which was passed in 1978, has a fine of \$50,000, and even given the ordinary requirements for inflation between 1978 and now, we are recommending that, for a corporation, the fine be up to \$100,000, and for an individual the fine be up to \$25,000, in order to indicate the seriousness of the offence.

There are certain sections that we would ask be added to the proposed code. A very important one, in our view, is that there should be equal pay for work of equal value. In both the federal Human Rights Act and the Quebec Human Rights Act there is a provision for equal pay for work of equal value, where it is clearly stated that it is a discriminatory practice not to pay

women equally for work of equal value; and we are recommending that the Ontario Human Rights Code provides the Ontario government with an ideal opportunity to put forward this statement of principle.

11:20 a.m.

We are concerned that sexist language appears throughout the code. To assist the committee, we have included a copy of the council's document, Words that Make Women Disappear, to perhaps make you somewhat more aware of some of the wording changes that we would recommend.

We would like the code, as well, to make it clear that breach of the code entitles a complainant to bring a case before the courts, that it provides the complainant with a cause of action, as an alternative to taking it before the commission. There is, I understand, one case now before the courts that has not yet resolved whether or not a statement that a certain act is a discriminatory practice in the code would thereby allow a person to sue and bring a cause of action.

Those are our submissions. members of the committee. We would welcome any questions.

Mr. Chairman: Thank you very much. Are there any questions?

Mr. Renwick: I just have one question. The brief raises a number of points, but for now, I would just like to deal with one.

I am particularly interested in Ms. Dranoff's views about section 30(3), section 30(6) and the draconian penalty provided in section 41 for a breach of section 30(6). I am really frightened about the provision that a person investigating a complaint may, without warrant, do certain things; and then anybody obstructing, under subsection 6, is subject to the penalty provision of a fine up to \$25,000.

Have you any comment to make about that section, the immensely sweeping powers given for investigation without warrant?

Ms. Dranoff: The warrant, it seems to me, is given to the commission, within the powers given to it under the act, to fulfil a function to investigate alleged offences and to use its investigators for that purpose.

When you say "without warrant," the purpose of a warrant that we give to the police, it seems to me, is that a policeman, to get a warrant, has to prove to a justice of the peace that he has reasonable grounds to search and investigate. If he can prove to a justice of the peace that he has those reasonable grounds, he can be given a warrant.

In the context of this act, the Ontario Human Rights Commission is given the authority to determine what are reasonable grounds for investigating. Once it has made that determination,

then it seems to me that is the warrant, and we are giving it that warrant, just as we give a justice of the peace a warrant in a criminal matter.

Once the members of the commission have decided that they have reasonable grounds for investigating a complaint--because the complaint has been made to them, and they feel it is worth investigating--then I do not see what else can be done other than giving their investigators the power to go in and investigate.

I think any limitation in subsection 6 would hinder the investigation to such an extent that it would make the whole code and enforcement of the code meaningless. I understand the problem, but--

Mr. Renwick: Let me just explain. I really get frightened when I think that we are appointing a commission that can have investigators who may, without warrant, question any person on any matter relevant to the complaint and may exclude any other person from being present at the questioning.

Do you share any concern with me over a clause such as that?

Ms. Dranoff: That is the first I have heard of it. Being a lawyer, I would like to study the wording. I cannot respond to the wording that you have proposed just now. I did not have any concern about the subsection when I looked at it because I felt that it was necessary in order to make the code effective.

Mr. Renwick: Not right now, but would you please address your attention to the whole of section 30, but particularly subsection 3, from the point of view of the extent and degree to which, in order to establish nondiscrimination in the province as an effective principle, that we must, of necessity, encroach upon very significant private rights of citizens without the intervening protection of the courts? I just wanted to let you know that I am very concerned about that section. I think we are going to have to look at it extremely carefully when we get to it.

Ms. Dranoff: We will look at it again. If there is anything that we feel we can usefully bring forward, perhaps we could send something in writing to the committee.

Mr. Renwick: We would appreciate that.

Mr. O'Neil: It certainly is of some concern to me too, because I can think of one example that I had in my own riding. The Ontario human rights people came into a business firm there--people who I consider are excellent people, not highly educated, very sincere people--and I would say there was harassment on the part of the human rights person who came in to investigate that particular claim or whatever it was.

As Mr. Renwick has related, I have real concern. We all look to the Ontario human rights people as being the people who will look after everybody. But in this particular case it was my feeling that they really harassed the owners of this business. They were not given legal advice. They were not advised of their

rights or how they could look after things. It just was not handled properly at all.

No matter what firm you are or what business you are or what board you are, you sometimes have people working for you who can turn the tables around and they can go in acting as if they are Lord almighty and really beat down the people. They should also be looking after their rights too, not just the people who have made the complaint. I have some real concerns in that area.

Ms. Gordon: I would like to add to Ms. Dranoff's opinion. If the committee wishes, we will certainly look at that and come back with some further thoughts on it. Thank you for your suggestions.

Ms. Copps: I had a couple of other questions with respect to the brief. On page five, section 9(a), you talk about the mandatory age of retirement and then you state, "the lower age of 18 could create problems for young women." You did not really elaborate on that.

Ms. Dranoff: I was thinking particularly of the instance that arose under the former human rights code where two cases were brought before the Ontario Human Rights Commission on whether girls aged 10 and 11 could play hockey or soccer with boys. There was the Cummings case and I have forgotten the name of the other one in the soccer situation.

It seemed to me under the old code that problem could be dealt with by the commission, that there was some remedy for these girls under the previous Ontario Human Rights Code. It seemed to me that with the rewording there might be a problem.

Ms. Gordon: I will add that we are also concerned that at the age of 15 many young women are already mothers and would be concerned about housing. They would also need to go out and be employed. We would be worried about that kind of discrimination.

Ms. Copps: What you are suggesting is to have the age classification only apply to age of majority in other acts, and there would, in fact, be no lower age or upper age?

Ms. Dranoff: That's right. In other words, there might be some situations where we would have to protect a person under the age of 18.

Ms. Copps: The other question I had--when you get into these definitions, it becomes very difficult--is on page four, section 6(a), you have suggested in point three that perhaps we make a tighter definition of economic consequences in defining a person in authority. I can understand your concern regarding a person in a position of authority, but when you get into the definition of economic consequences I can see that that also would be fraught with problems.

11:30 a.m.

I suppose it could be argued that even though it is your boss, personnel or somebody else is responsible for your pay

cheque. If you tie it too much into the economic consequences, you may be eliminating other avenues where sexual harassment could be defined.

Ms. Gordon: You are quite right. It could be grades of a professor. I think we should look at that and perhaps agree with you on that. I would like to discuss it further. Economics is one of the forms.

Ms. Dranoff: Maybe you start with that as one angle and leave it open that there might be other aspects.

Ms. Copps: But you were fairly happy with the definition of harassment as defined in the proposed bill?

Ms. Dranoff: You can say we are happy that there is something in there. Taking apart so much of section 6(a), as we have done, would really require a redrafting of the act. You look at the word "persistent," you look at "solicitation or advance," you look at "position of authority who knows or ought reasonably to know that it is unwelcome." That is a kind of fair measure of the wording.

It seems to me that the problem is, as far as I am aware, that there really are no precedent statutes to assist us. In this jurisdiction we have to be the first. That is why it would be my submission that we should be a little more simple in our definition.

Ms. Copps: The feeling that this committee has been getting so far is that most people would agree with some form of law that would cover that area, but where we run into problems is one this type of thing, the wording. People do not understand what "solicitation," "persistent," and words like that mean. It is a very difficult area.

Ms. Dranoff: The "persistent" problem seems to us to be a major one. To leave the word "persistent" in means that, in effect, that whole section will be ineffective, we will not be able to enforce it because we will not be able to-- It seems to us that the situations that would arise of persistence, of it happening enough times, would be quite rare and would not cover most of the situations of sexual harassment.

Mr. Stevenson: I think my question has just been answered. I was not clear in my own mind whether in your comments on subsection (a) that "harassment" was, in fact, an all-encompassing word, so that the word "solicitation" and "advance" could be left out and "harassment" would, in fact, take their place.

Ms. Dranoff: There is a definition in the code of "harass" which defines it sufficiently, both for the purposes of other kinds of harassment, as is contained in the code, as well as the sexual harassment. I think people understand the word "harass" a little more readily than the other that is used.

Mr. Eaton: Under section 19 where you are talking about discrimination of occupancy, the practicalities of it bother me

sometimes. I can think of two situations where ladies have homes. The entrances and everything are separate, with a locked door between the areas, yet they prefer to have women in those areas.

Here you are saying that there should be no discrimination allowed in that regard. To me, that is just a practical thing. If they want to make that kind of discrimination in their home, they should be able to.

Ms. Dranoff: You do not want them to be able to rely on the sexual harassment section of this?

Mr. Eaton: No, under section 19.

Ms. Dranoff: Yes, I see the problem that you are raising.

When we were reviewing section 19(3), we were more concerned in limiting marital status, because we were concerned primarily about single mothers who may have difficulty in securing accommodation. There are a substantial number three-family and four-family dwellings around. There seemed to be no reason that they should be limited from accommodation on that basis.

Mr. Eaton: Looking at it the other way, I think we can try and tie these things up too tight sometimes, so that you make it impractical for situations like that. If a man came along and they said they did not want to rent it to a man, they wanted to rent it to a woman, he could cry discrimination.

Ms. Dranoff: I think it is a question of--

Mr. Eaton: But I do not think they should be able to. I think if that person wants to make that kind of a decision about his home, he should be able to. Surely to goodness we are not going to go so far that we take every right away from a person in regard to what he can do with his own home in situations like that.

Ms. Gordon: If they are going into a business though, or they are going into the public, I think they should be subject to the laws.

Mr. Eaton: Surely the law should not be so tight that it tells a woman--in many cases a widow--that she is going to have to rent that home out to a man if she does not want to; if she feels more comfortable having a woman renting the other half of the house or whatever.

Ms. Dranoff: That is what we contemplated in putting in that shared entrance, shared kitchen or shared bathroom, which would take care of that. In other words, if they are sharing their own home, there are likely a shared entrance, shared kitchen, shared bathroom facilities, and they should have that right in that situation. We are stating that there might be situations where there are two separately enclosed dwellings within the same home and maybe we should look at that.

Mr. Eaton: I can go for an example right to my own mother. They have a separate entrance to the basement; there is nothing shared except there is one door in between the upstairs

and down. But she had problems with a younger renter in there with noise and so on, and every time now she would want a woman to rent that apartment. She should have that choice as far as I am concerned. That is her house and she should have that choice.

Ms. Dranoff: I guess what we are saying as a council is that in the permitted areas of discrimination--and there are many sections here which say although you are not supposed to discriminate, you can discriminate because of this, this or this--we are saying that those should be as severely limited as possible.

Mr. Eaton: I do not think she is discriminating. She is making a choice of what she wants to do with her property and her home.

Ms. Dranoff: I think we agree in principle. It is just a question of a difference in the wording.

Mr. O'Neil: On the question of sexual harassment, do you find this is quite prevalent? Are you having a lot of cases come before your group in this area?

Ms. Gordon: I think people are wanting to talk about it more than they have ever done. There have been a great many studies at different universities, and things like that happening. and it is the same kind of thing that happened when we were able to talk about rape and wife battering. That came out so that people realized that women had a choice to their own bodies, and that women had a choice to say no.

I think that sexual harassment is something that was always kept quiet because we always, again, were conditioned to say, as some people do say, that a woman would not be harassed if she had not asked for it. So I think now that it has come out and is being discussed. Yes, there have been many people talking about it. We now have books that have come out on sexual harassment, and quite a few studies done. And more women are less afraid to talk about it and discuss it.

Mr. O'Neil: But in the number of actual cases--

Ms. Gordon: It will be interesting to see how many cases you get when this is passed.

Ms. Dranoff: That is right. There has not been a forum in the past.

Ms. Gordon: In terms of complaints, yes, but as far as a forum is concerned, I will be very interested, and I think you would expect quite a flood of cases.

Mr. O'Neil: Do you realize that there may be harassment on the other side. You are saying women being harassed. It could be men being harassed too.

Ms. Gordon: I certainly think a man will be able to do the same thing; absolutely. Everything that women ask for for

women, where they had no lobby before or nobody to speak for them, actually helps men tremendously.

Mr. O'Neil: Of course too, I would ask where do you draw that line. You are saying in this definition of persistent--but where do you draw the line between charging a person before the Ontario Human Rights Commission with harassing, either a man harassing a woman, or a woman a man, and charging someone in an instance where you could really damage a person's life for the rest of their life in any family connections. Where do you draw that line?

Ms. Gordon: Excuse me, have they not always said exactly the same thing about rape? And has the court not decided on that basis, what are we going to do to the man and his family and his wife? Is that the way you want to decide?

Mr. O'Neil: What I am asking you is where you draw that line? Where do you see it yourself? How would you define it? What proper definition would you give of "persistent"?

11:40 a.m.

Ms. Dranoff: We have talked in terms of calling it sexual harassment, and defining the term for a person in a position of authority, and expanding from persistent solicitation or advance, she should just use the term sexual harassment. I think you have it defined in the act as a vexatious course of conduct, I believe. Section 9(g): "'harassment' means engaging in a course of vexatious comment or conduct." So, if it is sexual harassment, the term used in section 6, the word harassment has already been defined in the act, in a useful fashion.

Mr. O'Neil: So you would take the definition that is there and be satisfied with that?

Ms. Dranoff: That is right.

Ms. Gordon: And it is not something they can do in a flimsy way. They would have to go before a forum. They would have to be judged just as many things are. Even a bond of peace. I do not know how that works, but you could just go-- I think this is why we have a forum to assess that. People do not do that, or on the whole I would suggest that people do not put themselves up for public scrutiny or for any kind of scrutiny if they do not feel they have a case. And that is what the commission is for.

Mr. Chairman: Thank you very much for your presentation to us this morning. I think you indicated that you would be looking again at a couple of parts that committee members indicated and if you forward that to individuals, as you always can, or to the whole committee through the clerk, we will make sure that information is available to all members.

The last group this morning is the Ontario Committee on the Status of Women; Lynne Sullivan, I believe.

Ms. Sullivan: Thank you very much. I would like to start by introducing my colleague, Chauiva Hosek, on my right.

Mr. Chairman: Could we just, for Hansard, get the names and how they are spelled?

Ms. Sullivan: Chauiva Hosek and I will jointly be presenting our remarks on Bill 7. I would like to start out by telling you who we are and differentiate between the Ontario Committee on the Status of Women and the Ontario Status of Women Council, which appeared prior to us, because I am sure some of you are very confused.

We are nongovernmental. We are a voluntary lobby and public education group. We were established in the early 1970s after the report of the Royal Commission on the Status of Women. Our purpose initially was to lobby for the passage of those recommendations from the royal commission report which came within provincial jurisdiction.

We have, since that time of course, come up with new issues that were not evident in 1970 and expanded upon some of those recommendations. But basically that was our original purpose. We have over 400 individual members across Ontario, and in addition to that, we have numerous affiliated organizations.

We are also one of the groups which made a presentation and brief to the committee that was set up in the mid 1970s to look into changes to the Ontario Human Rights Code. And this bill, I suppose, is its major outcome in addition to the Life Together report. We will be providing you with the brief we wrote in 1976, and in addition to that, we have four pages of comments specifically on Bill 7.

I would like to start out by saying that there are some aspects of Bill 7 which we are pleased about. First of all, that the Ontario Human Rights Code has now been given primacy over other legislation. I think that was an important point although, of course, we are quite dismayed that in the bill itself, regulations under part X of the Employment Standards Act have already been exempted from that primacy. We think that that was a very bad step indeed.

We are pleased that sexual harassment has now been included as a prohibitive ground of discrimination; that marital status is now included as a prohibited ground of discrimination, in regard to accommodation; that the definition of age has been expanded; and that government contractors and subcontractors are now required to comply with the code, and sanctions are provided for noncompliance.

Having said all that, we are pleased with the code, but not nearly as pleased as we would like to be. In our view, the changes that are reflected in Bill 7 are far from adequate, both as regards to the substance of the code and provisions for enforcing it.

We would like to make the point that although Ontario has traditionally regarded itself as a very progressive province and in the forefront of change with respect to human rights, in fact, Ontario has fallen very badly behind other jurisdictions. This has been very evident this morning. The two groups which appeared

before us both mentioned a number of areas in which other Canadian jurisdictions are far ahead of Ontario. I would particularly cite the federal jurisdiction, Saskatchewan, Manitoba in regard to retirement, and Quebec. So, Ontario certainly has lost the leadership role it once had back in the 1950s.

We also feel that the government has had a very long time to work on this act. Our brief had to be submitted to the code review committee by May 15, 1976. That was more than five years ago. We are really not convinced this was the best that could be done. We see a number of areas in which significant changes can and should be made and we would hope you will be as convinced as we are that they ought to be made because, in our experience, if you do not get changes when the bill is before the House, it will be a very long time getting it before the House again.

Bill 7 certainly gives the appearance of making substantive changes, but in fact the changes are minimal. I believe the representatives from the Ontario Advisory Council on Senior Citizens, who spoke first this morning, also commented on the fact that while part I of this act appears to confirm additional rights and extend existing rights in a number of areas, these are limited, qualified, and in some cases, virtually nullified by provisions in subsequent sections of this act. Bill 7 does virtually nothing about enforcement, which is an area in which Ontario has been very weak, even compared to other Canadian jurisdictions.

Chauiva is now going to comment specifically on some areas of the act.

Ms. Hosek: Thank you. These are some of the issues that are major concerns of OCSW, the Ontario Committee on the Status of Women, regarding Bill 7. The first is on the grounds of discrimination. The definition of age is extended here from the previous description of 40 to 65 to 18 to 65, and this is an improvement as far as it goes, but we see some problems.

First of all, re employment. There are more older women than men and the upper age limit of 65 will have a greater impact on women. We all know the conditions in which especially older women in Canada are living and the poverty of older women in Canada. These women may have a greater need even than older men to be employed. We also question the legitimizing of the practice of putting older workers out to pasture as a matter of public policy, and here we agree with the Ontario Advisory Council on Senior Citizens who spoke to you earlier today.

Under Bill 7 nondiscrimination on the basis of age is also extended to other areas covered by the code; not just employment, but accommodation and services. Given the upper age limit, a landlord could now refuse to accommodate those people over 65 or a restaurant could refuse to serve certain older patrons. Surely, these anomalies in the extension of the age definition were not intended by the drafters of the legislation and we think something has to be done about that.

The lower age limit of 18 also causes some problems. Some people under 18 would not enjoy the protection of the Human Rights

Code and yet there are situations in which people under 18 can, for example, be charged under sexual offences as adults. In addition, persons under 16 or around 16 may be seeking employment or be employed and require protection of their rights to employment opportunities and accommodation.

Because of this problem, the Ontario committee recommends the lifting of the upper age limit of 65--in other words, abolishing the upper age limit--and reviewing the lower age limit and its implications for those people who may be in the labour force and may, in other ways, be able to be treated as adults.

The question of family, the definition of family is another problem we have. Here family is defined as "persons in a parent and child relationship," and this becomes a prohibitive basis of discrimination under Bill 7. When we wrote our brief in 1976, we used the word "parenthood," but developments since then have caused us to want to expand that definition.

11:50 a.m.

The drafters of this legislation wish to secure the rights to employment and accommodation, and so on, to persons charged with the care of children, in this case mothers of the children, and we applaud that. But we think that the ground should be broader than family and that other types of dependency or support relationships should be recognized and protected.

For example, people may be caring for elderly relatives or for friends who are not their parents. We want to point out that the Family Law Reform Act, in its support provisions, recognizes extended relationships that are worthy of protection, and we think the Human Rights Code should be consistent with this legislation and broad enough to cover dependency other than just parent and child dependency. We think it should be extended.

Sexual orientation is omitted as a prohibited ground to discrimination and the Ontario committee strongly supports its inclusion. In 1981 there is no excuse for delay in acting to protect nondiscrimination rights in this area.

Ms. Sullivan: I want to go on now to look at the sections of the act which deal with nondiscrimination in services.

Part I, section 1, provides equal access to services on various nondiscriminatory bases, but this right is severely limited by part II, section 18, which specifically limits access rights where religious, philanthropic, educational, social, fraternal and educational organizations exclusively engaged in serving the interests of similarly identified people, whatever that means, are concerned. Linda Silver Dranoff has pointed out one of the areas in which this is a concern to us specifically. She used the public decency clause. We feel that with regard to part II, section 18(2), which we call the "Granite Club clause," this could also apply.

Everyone recognizes that nondiscrimination in services and facilities is a complex area. There are services and facilities,

such as, community centres, restaurants, hockey arenas, or what-have-you, which most people would regard as public. Then there are those which most people would regard as private and justifiably exclusive, such as, private clubs. However, there has been considerable controversy relative to what is truly and justifiably private and exclusive, so these sections are of great interest to the Ontario Committee on the Status of Women.

We are both shocked and concerned that the revised Human Rights Code does not provide equal opportunities for girls and women in sports and recreation despite two human rights cases, those of Debbie Baszo and Gail Cummings, where the inadequacies of the existing legislation were amply demonstrated. We see nothing in this bill that will remedy that situation. It is true that unincorporated associations now come under the purview of this act; however, we feel that the exemption in part II, section 18, regarding religious, philanthropic, et cetera, organizations could be used to perpetuate those kinds of situations.

Therefore we recommend that section 18(2) of Bill 7, which provides exemption with regard to facilities and services exclusively engaged in serving their members, or similarly identified people, be qualified so that discrimination is not permissible if the organization is in receipt of public money, including grants, loans or something similar, or uses publicly supported facilities. In this way, organizations that desire to be exclusive can be so as long as they support their exclusivity themselves. I would point out that in this regard, we would include such things as Wintario grants, because a number of unquestionably private clubs get Wintario grants and we think that is quite inexcusable.

Ms. Hosek: We want to talk about nondiscrimination in accommodation. Part I, section 2 provides equal treatment in accommodation, but, again, this is severely limited in part II, section 19. People with children or other dependents and those involved in common-law, heterosexual or homosexual relationships are particularly disadvantaged by restriction in accommodation. The Ontario committee recommends that section 19(3), which allows discrimination in small buildings on the basis of marital status, be deleted, along with section 19(4). The latter provides an exception to nondiscrimination on the basis of family dwellings with a common entrance and is so broadly written that it could be construed to allow high-rise buildings to be adult-only buildings.

Ms. Sullivan: With regard to nondiscrimination in employment this is an area where we feel strongly that the equality rights conferred in the first part are considerably limited and unduly so by part II of the act. Religious, philanthropic, social, fraternal and educational institutions are allowed bona fide occupational qualification exceptions. Consistent with our previous recommendation, we would limit such exemptions to organizations not in receipt of public funds and not using publicly-supported facilities.

Bona fide occupational qualification exemptions are also allowed to employers under section 21(6)(b) based on age, sex, record of offences or marital status. With perhaps some few

exceptions regarding age, which may sometimes be a bona fide qualification for reasons of public safety, we can conceive of no bona fide exemptions on the basis of marital status and we have great difficulty coming up with any on the basis of sex, although people have suggested that wet nurses and sperm donors might perhaps qualify under those criteria.

Moreover, we are very seriously concerned about the way in which bona fide occupational qualification--BFOQ--exemptions have been misused in the past. Just to illustrate the nature of our concern, they have been very badly misused with regard to things like group homes, which are funded with public money, as I am sure you know.

We are personally aware of instances when authority for some of those homes was changed from the Ministry of Correctional Services to the Ministry of Community and Social Services. All of sudden the homes applied to ComSoc for exemptions for the couples who ran those homes and they were getting sex-based exemptions for the sort of leader in the homes or the chief person in the homes. I do not know what they were telling the Ontario Human Rights Commission about their reasons for getting those exemptions, but they were certainly getting them where they had not existed before. So, we do not think that should be allowed.

We would recommend, in this regard, that marital status be deleted as a basis for which a bona fide occupational qualification exemption is ever allowed. We would also like sex to be deleted; however, we are not so deluded as to think you will really do that, although you ought to. Therefore we would recommend if BFOQ exemptions on the basis of sex are allowed to continue that employers be required to apply for a BFOQ exemption on a case basis and not for a group of jobs; that the employer be required to prove the validity of the requirement; that employers be given a BFOQ exemption number, if exemption is granted, and this number be quoted in advertisements or when soliciting applications; that all exemptions granted be published in the Ontario Human Rights Commission's periodical, Affirmation, and quoted annually in the annual report of the Ontario Human Rights Commission so that they are subject to public scrutiny.

Ms. Hosek: As we noted at the outset, we are pleased that sexual harassment is included as a prohibited basis of discrimination in the new Human Rights Code in Bill 7. However, the provisions of Bill 7 require substantial modification. There is reference to a person in a position of authority and the Ontario committee thinks that should be deleted because co-worker sexual harassment should also be prohibited.

Harassment by co-workers on other bases is now prohibited. In other words, it is not simply a person in authority, but also a person who is a co-worker is prohibited from making racial slurs and comments to another co-worker. On the same basis, we think that both persons in authority and persons who are co-workers should be prohibited from engaging in sexual harassment.

The statement that a person knows or ought reasonably to know that solicitation or advance is unwelcome should also be

deleted because we do not think you can judge what someone should know or does know. The emphasis should be on the action and not on its supposed motivation, which is not up to us to determine.

The government had also promised that the amendments would cover those who would countenance sexual harassment and Bill 7 does not do this. It only provides, under part IV, section 38(4), that such a person is to take steps to prevent a continuation or recurrence of sexual harassment in the future. We think this is insufficient as encouragement to employers to deal firmly with harassers and to develop a preventive approach, which we think is extremely important.

Therefore the Ontario committee recommends that Bill 7 be amended to effectively deal with those who countenance sexual harassment. Our sense is that if an appropriate atmosphere is created in the work place, the problem could disappear or be severely limited, and that would be the best way to deal with it in the future.

12 noon

Ms. Sullivan: Provisions to the Human Rights Code incorporate the notion of indirect discrimination in section 8 and section 10. However, we are of the opinion that these sections are so narrowly framed that they really do not enlarge upon case law which is already there under the existing code, specifically the Ann Colfer case, which involved the imposition of height and weight requirements based on national norms for males, which was deemed to be discriminatory, and the Singh case, which involved a man who was applying for a security guard's position and because of his religion wore a turban and was denied a job, and that was found to be indirect discrimination.

We think of this as rather a critical shortcoming since it is generally agreed that it is very important to address policies, practices, agreements and systems that impact adversely on groups who are protected under human rights legislation. In the light of this we would recommend that part II, section 10, be replaced by a section worded in such a way as to effectively deal with the problem.

We think that you should look at two possible examples of sections which deal much more adequately with this problem: section 10 of the Canadian Human Rights Act, which is known as the deprive or tend to deprive clause, which prohibits policies, practices and agreements that deprive or tend to deprive individuals of opportunities based on a prohibited ground of discrimination. We have attached the wording of that to our submission to you this morning; also the definition of indirect discrimination, which is used in the United Kingdom's Sex Discrimination Act, both of which are far more relevant to the actual nature of the problem than what is provided in this act in section 10.

We have a similar program with the definition of special programs or affirmative action in Bill 7. It is unclear why Ontario has developed yet another description of special programs

when workable--and, I would argue, much better--descriptions are available in other statutes. Our lawyers advise us that there are countless legal problems involved with this definition because it has three different parts to it and the latter two parts could be interpreted in the light of the first part, which focuses on economic disadvantage. You could get into a long hassle with an employer having to prove that it was all right to undertake a program because, in fact, his workers were really hard enough done by to benefit from such a program.

It is ironic also that affirmative action programs are meant to achieve a positive purpose, yet if you read this definition it is entirely phrased in the negative. It says "a special program designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of the infringement of rights under part I." When I read this as a lay person I feel women are being described as basket cases and I think it is really not a very adequate definition at all. We are prepared to help you in this regard as well.

We have attached for your edification a section of the Canadian Human Rights Act, section 15. It is considered a very good definition of special programs and it was cited in a number of briefs filed with the joint Senate-House committee on the constitution. We hope you will have reference to that much better definition.

Next we think there has been a serious omission in Bill 7, the revision to the Ontario Human Rights Code. The status of women council has also noticed it. Equal pay for work of equal value has not been included in this bill and obviously it should have been.

We would like to see equal pay for work of equal value added and it should cover all forms of compensation, both direct and indirect. It is our belief that equal pay for work of equal value deals much more effectively with the true nature of the problem--that is, the discriminatory nature of job evaluation systems. I think that Canadian experience in other jurisdictions has proved this.

In addition I would point out that in the United States they are now moving to some degree away from using a labour standards type of approach to equal pay, which they were formerly doing under the Equal Pay Act, and have started taking cases under title seven of the Civil Rights Act, which is a human rights type approach and seems to deal much more effectively with the problem.

I would also point out that we feel that equal pay for work of equal value has been rejected for the wrong reasons in Ontario. It is clear to us, although it is obviously not clear to other people, that business is not going to flock away from the parties they now vote for if this is put into law, although of course they will say that they will.

It is also true that a number of the people who have spoken against equal pay for work of equal value have used totally

erroneous reasons in what they have said. They have said, for example, that you would be comparing men working in Sudbury with women working in Windsor. They have said you would be comparing men with men and women with women, none of which is true.

Because we are also saying that pay, under equal pay for work of equal value, should be defined to include all forms of compensation, we would also see the regulations under part X of the Employment Standards Act now put under the Human Rights Code. We feel that in addition to being put there these regulations, which deal with nondiscrimination on the basis of age, sex and marital status in employee benefit plans, need to be updated to reflect progress in this area since they were first passed in 1975 and developments in other jurisdictions. There is no question that when Ontario brought these in 1975 they were providing leadership in Canada in so doing. However, there are a number of significant areas, such as treatment of pregnancy and pension funds, where they need to be very much improved upon.

In this regard we would also see protection of nondiscrimination for people with handicaps and employee benefit plans being included in those regulations, rather than being treated in the substance of the act as they are here. Therefore we would recommend that sections 21(3), (4) and (5) be deleted and when they are rewritten to form part of the regulations we would hope not to see across-the-board blanket pre-existing conditions clause exemptions related to people with handicaps. We feel strongly there is no good argument to be made for that kind of thing.

With regard to provisions for contracting on equal terms, we oppose the exceptions in this area on the basis of sex and marital status contained in part II, section 20. We feel strongly that the insurance industry has seen fit to discontinue discrimination on the basis of race and ethnic origin a number of years ago. However, individual women are still disadvantaged in purchasing insurance and annuities on the basis of group characteristics and distinctions based on marital status still apply in areas such as car insurance. Age also applies there.

We recommend that sex and marital status be deleted from section 20 and that age be deleted in respect of car insurance.

Ms. Hosek: We welcome steps in part II, section 23, to require that government contractors and subcontractors, and those in receipt of grants, loans, contributions or guarantees, comply with the Human Rights Code. However, we are afraid that the practical effect of section 23 will be very limited. The clause does not constitute contract compliance as we conceive of it, and we are of the opinion that the government also does not see it in this light.

The penalty provided for noncompliance is cancellation of a contract and refusal to contract again with the party concerned. In practice we think that debarment from future contracts is more likely, since few contracts would outlast an Ontario Human Rights Commission investigation.

Since section 23 is intended to provide a spur to compliance, as well as a meaningful penalty for noncompliance, we recommend the active enforcement of this section. Our recommendation 12, which we will pass to you, is the following: That under part II, section 23, government contractors and subcontractors would be required to undertake affirmative action programs. They should be monitored by an agency which is specifically set up for that purpose.

On the matter of enforcement, in Bill 7 we see no meaningful changes to improve the enforcement of the Ontario Human Rights Commission provisions. This has been a weak point in Ontario in the past.

The requirement for a board of inquiry to report within 30 days, which is put forward as a help to enforcement in part IV, section 38(5), is meaningless because failure to report that requirement on time could only hurt the complainant, it could hurt no one else. Therefore we recommend: that the Ontario Human Rights Code be amended to include the right to pursue a civil action at any stage, including at the outset of a case; that more staff and financial resources be allocated to enforcing the code; and that board of inquiry chairs be paid an appropriate per diem so that their decisions may be written in a more timely fashion. We feel right now the kind of pay that they are given makes it very difficult for them to take the time required to comply quickly, given the other requirements on their time.

We also think complainants who wish to have a decision reconsidered should have reference to a third party and not to another member of the commission staff. The Human Rights Code should also provide for representative actions.

12:10 p.m.

Ms. Sullivan: I would like to close by commending the human rights commission on some of the enhanced efforts it has made with regard to public education. They are now producing a little newspaper called Affirmation and you are generally seeing more things about human rights in public places, on billboards and that sort of thing. We urge that this be continued.

In particular we also urge that detailed data on the number and types of complaints as well as case summaries be made available. There have been some efforts to do that and we think that that is a very useful way of the public monitoring what kind of decisions the commission is making and also of keeping up to date that it is in fact taking active enforcement.

I would also like to state that at the beginning of the hearings today Sheila Copps raised the problem of the time frame for these hearings. That is something we would like to mention to you too. We saw the ad about these hearings in last Wednesday morning's Globe and Mail, which gave us precisely one week to get here.

We called the clerk's office and they were certainly very nice and very helpful, but we were told that the hearings were

starting that night at nine o'clock; that they were taking place Tuesday and Thursday mornings and Wednesday evenings until June 16; that there was very little space left on that agenda for any more groups to be heard.

When I asked whether the hearings would be extended the person could give me--and I am sure with justifiable reasons--no idea of whether that would be the case. So we felt we had to press very hard to be included in the first parts of the hearings or we would get no hearing at all.

Now we had been on the list to have a hearing last January when a similar bill was before the previous House. You may well say that since we were getting prepared for that we should have been prepared for today too. But in the meantime of course we had no idea when this act was going to be reintroduced, when hearings were going to be held, and if in fact the same bill was going to be reintroduced. This put our group, and I am sure many others, in a very bad situation.

We are submitting to you today our 1976 brief, along with four pages typed by a rank amateur--myself--of recommendations regarding the substance of this. I am sure we could have done a much better job with that as well as with our presentation today if we had had more time. I think there probably are groups out there who would like to have a hearing who are not going to have one because they think there is not enough time and they are not going to get one.

I would like to make the recommendation that some notice be put in the paper or announcements on radio or something. I would also like to state that although we have prepared in a hurry we hope that you will take our recommendations into serious consideration when you make yours.

Mr. Chairman: Thank you very much. I certainly can assure you that we take all the recommendations in a serious way and certainly yours. Are there any questions that anyone in the committee has?

Ms. Copps: There is so much there that it is hard to start, but I will just pick out a couple of areas. One I did have some concern with is where the commission has provided for the opportunity to restrict employment sometimes where bona fide religious, philanthropic, sexual or other requirements are deemed to be a necessity of the job.

You have suggested that that aspect be altered or removed and I would think that it would put you in somewhat of a difficult position in the way that that act is proposed. Let us suppose you wanted to hire an advocate for women's issues and all other things being equal, you might want to give preference to a woman over a man. If you struck that clause from the proposed act it would not give you that opportunity.

Now I can understand why you feel there are certain loopholes that it may also be applied to. But if you struck the clause completely then you would also open yourself up to not

being able to, in bona fide circumstances, give preference to one sex or another for example.

Ms. Sullivan: Well, we do not get any public money, so we are all right in that regard. Wintario has not showered us with any grants and we are totally a volunteer organization.

I understand the point that you are making, and certainly it is something that we have had a lot of discussions on ourselves. We are really concerned about the way the BFOQ exemptions have been used. It has been very serious indeed.

Ms. Copps: Maybe you could also advise people--I had to find out what BFOQ was.

Ms. Sullivan: Bona fide occupational qualification.

Ms. Copps: The other thing actually was raised in the previous group and you make mention of it also. It is just in the definition of employment. Section 4(1) of the act just gives every person the right to equal treatment in employment, but it does not specify, for example, seeking employment, advancement and that kind of thing. Do you have concerns there?

Likewise, subsection 2 of that section does state that an employee has the right to freedom of harassment by an employer or another employee, whereas when you get into the definition of a person in authority, that seems to contradict what is being said in part I, section 4(2).

Ms. Sullivan: I think Linda Dranoff's point this morning for section 4(1) is quite true. We did not particularly notice that wording. We hit more on the indirect discrimination clause later on. I think clearly they have to really broaden this act or it could be very narrowly construed.

Ms. Copps: But in section 4(2) it talks about harassment and you have mentioned you feel that harassment should be applied in a more general way rather than just to a person in authority or one of the superiors. It seems to address that in section 4(2), but when you go back to the enforcement, it specifies a person who is in authority and who also would have to have knowledge of the act.

Ms. Sullivan: We think that person in authority is a really severe limitation, because co-worker sexual harassment is known. It is absolutely true, at least in studies that have been done, that most reported cases are supervisors harassing, because they have something to hold over someone's head. But co-worker harassment is certainly known.

Ms. Copps: You also suggested that you might consider eliminating under section 38 the area about the superior who was in possession of knowledge, et cetera. You think that part of the qualification should be dropped. But if that were dropped and there was nothing put in its place, it would put an employer potentially in a situation of being charged with discrimination of which he or she had no knowledge.

Is there another way of working that wording? You felt that brought too much into deciding somebody's motives or something. It is on page 15.

Ms. Sullivan: We were making the point that the government has not really done what it said it was going to do. The government said it would quite clearly get at the issue of countenancing harassment. And this does nothing on the first go round, and tells you that subsequent to someone being found guilty, you can, in the future, be required to deal with the problem.

I know in the United States there have been a lot of cases in this area. It is one of the more effective ways of getting a company to have a policy against sexual harassment and do some work themselves, if they feel that they are liable for not doing anything about harassment that occurs, and not taking preventive measures.

Ms. Copps: So you say that you would be happy if that section were just entirely struck.

Ms. Sullivan: Not the section, but the limitation. We want countenancing of sexual harassment clearly covered as prohibited.

Ms. Copps: Countenancing, that is where I would see a problem. Countenancing implies implicit knowledge. In my understanding of the word countenancing, if you are countenancing somebody's actions, you have to have prior knowledge of them. And prior knowledge may not have been established. I understand your point. People may use this as a loophole to get out of it. But I would think there must be another way of attacking it so that you do not allow employees to countenance sexual harassment, yet they are at least given the benefit of having prior knowledge.

Ms. Sullivan: That may be giving them too much benefit because there are certainly a lot of things that they could do. Countenancing was the word that was suggested by our lawyers, so we are open to other words if someone has a better one.

Mr. Stokes: It makes for more litigation for lawyers.

Mr. Chairman: Are there any other questions from members of the committee? If not, we thank you very much for appearing before us today. You do have copies there for us? Do you want to distribute those now? Perhaps if you deposit enough with the clerk, he will make sure that everybody on the committee gets a copy.

12:20 p.m.

Ms. Copps: There were so many things you talked about, it is hard to remember all of them. There was the issue of enforcement and how the present code has not been able to enforce properly.

There seem to be two distinctions that people are drawing here. One is the question of the time limit in regard to the bill

and to come to a conclusion, and the other one is the actual enforcement of its provisions. What do you think of the objection that was raised today, that would see that the human rights commission, at present with powers of search without warrant, with perhaps too much power?

Ms. Hosek: That is a power to investigate rather than the power to enforce. We are more concerned with powers of enforcement here in our recommendations. We have not really thought out the implications of some of the questions Mr. Renwick asked about investigation. That is something we want to think about further.

We were most concerned not about the investigative end but, once whatever process everyone has agreed to as reasonable and fair has been gone through-- It is ironic that Mr. Renwick was concerned about that, because whatever the investigative procedures, the record of enforcement is not very good. So the stories about whatever might happen in the process of investigation, if indeed there are problems, do not eventuate in very strong decisions at the other end of the process. That is where we think the effort should be made to make sure that once the investigation has gone on with as appropriate and decent limitations on action as possible, the enforcement level is really very weak and that is where we think the energy should go. This bill does not address that at all strongly, both the procedures for making enforcement happen more quickly and the penalties at the other end.

Ms. Copps: Have you seen any statistics? We have not actually seen them yet. Maybe we will get into them when we go into the clause-by-clause study. We did get a chart on how many complaints had been issued, how many complaints had been resolved, but there is actually no breakdown as to the enforcement that the human rights commission is responsible for at present or has accomplished over the last few years. Is that information available?

Ms. Sullivan: We do not have recent information. It used not to be available at all. A lot more is available now than ever has been, but I have not looked recently at what they have.

There was one question earlier that the gentleman next to you asked: how prevalent sexual harassment was. We understand there were 200 complaints laid last year, and in the absence of specific prohibition against it in the act, I think that is indicative that there are a lot more out there, if people knew they had an avenue of redress.

Mr. Stokes: You would not suggest taking care of discrimination in this by countenancing harassment as has been suggested?

Ms. Sullivan: I do not think that is what we meant, no.

Mr. Stokes: I am sure you did not. It is awfully difficult to follow all of the things that you said in such a brief period of time. Not having had your submission in advance to follow along with you, we are going to have to take time to study

both your submission of 1976 and your remarks on the previous bill of 1980.

I realize that you did not have much time to prepare for any reaction you had to Bill 7, but I shudder to think what it would have been if you had had sufficient time.

Ms. Sullivan: Maybe they should have hired us to write the act.

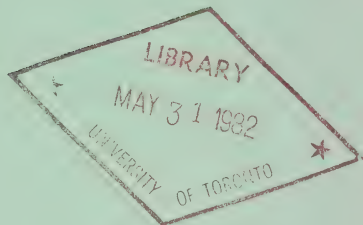
Mr. Chairman: Thank you very much. It is past 12 o'clock so we will adjourn until eight o'clock tomorrow evening.

The audio-visual presentation that we referred to last night will be at two o'clock in committee room No. 2.

The committee adjourned at 12:24 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

THE HUMAN RIGHTS CODE

THURSDAY, JUNE 11, 1981

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Stokes, J. E. (Lake Nipigon NDP)

Substitution:

✓ Boudria, D. (Prescott-Russell L) for Mr. Eakins

✓ Also taking part:

Breaugh, M. J. (Oshawa NDP)
Foulds, J. F. (Port Arthur NDP)
Gillies, P. A. (Brantford PC)
Martel, E. W. (Sudbury East NDP)
McClellan, R. A. (Bellwoods NDP)
Philip, E. T. (Etobicoke NDP)
Sweeney, J. (Kitchener-Wilmot L)

Clerk: Richardson, A.

Assistant to Clerk: Van Bommel, D.

✓ From the Ministry of Labour:

Brandt, A. S., Parliamentary Assistant

Witnesses:

From the Religious Leaders Concerned About Racism and Human Rights:

✓ Bhagan, Rev. K., Chairman
Kilburn, S., Member

✓ From the Canadian Civil Liberties Association:

Borovoy, A., General Counsel

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, June 11, 1981

The committee met at 8:56 p.m. in room No. 228.

THE HUMAN RIGHTS CODE
(continued)

Resuming consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario.

The Acting Chairman (Mr. Eaton): I see a quorum. I call on Dr. Bhagan to take his place up here.

Mr. J. M. Johnson: Mr. Chairman, I wonder if we could have clarification. We have six presentations tonight and since we are running an hour late, do you have any intention of setting a time frame?

The Acting Chairman: No, we will let the gentlemen make their presentations and any questions that you may have will be put to them. If we run out of time, we will reschedule the others.

Mr. J. M. Johnson: I wonder, then, if I could ask the committee if they would agree on a time frame so that everyone could be heard tonight.

Mr. Stokes: That would depend on the presentations of those whom we have invited here, would it not?

The Acting Chairman: We will take them as they come and see how the time goes.

Mr. Martel: I think what the member is attempting to do is to accommodate the people who are here. At the same time, I would suggest that what my colleague says--

Mr. J. M. Johnson: The only problem is, Mr. Martel, that sometimes you spend an hour on the first presentation and it leaves a very few minutes for the rest of the people.

Mr. Martel: But it is a disservice to those people who prepared presentations.

Mr. J. M. Johnson: All right, I simply brought it up.

Mr. Martel: No, I am glad you brought it up. I am just saying--

The Acting Chairman: We are using their time now, so let the gentleman get on with his presentation.

Reverend Bhagan: My name is Ken Bhagan, for the record, so that we have the pronunciation straight. I am the chairman of the Religious Leaders Concerned About Racism and Human Rights.

With me this evening making the presentation is Mrs. Susan Kilburn, a member of the committee.

I will just give a short introduction, Susan will address five issues we are concerned about in the bill and then I will present the conclusion.

First of all our Religious Leaders Concerned About Racism and Human Rights would like to express our sincere thanks to Hon. Robert Elgie, Minister of Labour, for presenting Bill 7 to the Ontario Legislative Assembly.

This group, Religious Leaders Concerned About Racism and Human Rights, submits this brief as part of an ongoing effort to promote positive attitudes towards minorities in Ontario. The members of our group include religious leaders of the Jewish faith, the Muslim faith, the Catholic church, the United church, the Anglican church, the Presbyterian church, the Lutheran church, the Baptist church and the African Methodist Episcopal church.

9 p.m.

The legislative committee is currently working to promote adequate human rights legislation in Ontario. Ontario's present Human Rights Code was first enacted in 1962. Since that time, new issues and needs have developed. In 1977, the Ontario Human Rights Commission presented the government of Ontario with Life Together: a Review of Human Rights in Ontario. This was followed by the Pitman report, Now Is Not Too Late. Both these documents made a number of recommendations for changes in the Ontario Human Rights Code and in the Ontario Human Rights Commission.

Bill 7, currently before the Ontario Legislative Assembly and this committee, is an attempt to act upon some of these recommendations. It cannot be considered adequate, however, as it ignores several important concerns of our committee. Susan is going to address those concerns.

Mrs. Kilburn: First, the issue of gay rights has been given extensive coverage by the media. This attention reflects the severity of the prejudice that homosexuals in our province encounter in their daily lives. The members of this committee believe in the principles of tolerance and understanding expressed by the religious documents of their respective faiths. All these documents demand justice and respect for every member of our society, without exception.

Under Bill 7, homosexuals in Ontario continue to be excluded from the protection of the law. This committee recommends that, following the precedent set in Quebec, sexual orientation be included in the prohibited grounds for discrimination laid down in part I of the Ontario Human Rights Code.

Second, the Ontario Human Rights Commission was set up under the Ministry of Labour at a time when the effects of discrimination were felt to be most serious in the area of employment. Since that time, minority group members have complained of discrimination in many other areas of their lives.

It is no longer appropriate for the commission to function under the Ministry of Labour. We therefore recommend that the Ontario Human Rights Commission be made an independent agency accountable directly to the Ontario Legislative Assembly.

Third, under section 26 of Bill 7 the Ontario Human Rights Commission can recommend that a company convicted of an offence against the code initiate an affirmative action program. The wording limits the power of the commission in this matter and does not ensure that the company adopts such a program when asked to do so.

In order to strengthen the social impact of this law, the Ontario Human Rights Commission should be given the power to enforce the implementation of affirmative action programs when circumstances warrant it, and the wording of section 26 of the Ontario Human Rights Code should be strengthened accordingly.

Fourth, the race relations division was created in response to a changing society with more visible minority members and increased needs in the area of race relations. The programs of this division stress community involvement and are designed to encourage positive intergroup contact and to prevent discrimination from developing. At present the race relations division does not have real control over the implementation of these programs, as it is dependent on funding from the Ontario Human Rights Commission. The effectiveness of the race relations division would be increased if it were given an operating budget independent of the human rights commission.

May I add a fifth point, concerning the race relations offices. It is our contention that the work of the race relations would be much further if they were in storefront locations across Metro rather than at 400 University Avenue, which is a somewhat intimidating edifice.

Reverend Bhagan: The members of Religious Leaders Concerned About Racism and Human Rights have discussed Bill 7 and agree that the above changes must be included in the Ontario Human Rights Code in order to make it truly effective and capable of meeting the needs of our society. If we are to protect the rights of all our minorities, we need adequate legislation.

This brief was circulated. We have attached a list of the members of our committee and I would like to correct a typing error on that sheet. The name, Reverend Tim Tyan, should read Reverend Tim Ryan.

The Acting Chairman: Thank you both for the presentation. Mr. Johnson, you have the first question.

Mr. J. M. Johnson: I would like to ask a few questions, mostly related to your first statement. I find it intriguing that Religious Leaders Concerned About Racism and Human Rights should zero in on gay rights since it is not even in the bill. But besides that fact, it concerns me that you mentioned you represent religious leaders of the Jewish faith, the Muslim faith, et cetera.

We had a presentation from Mohammed Qaadri on June 4 and when I asked him his opinion about sexual orientation he emphasized--and I stand to be corrected--that homosexuality was a disease.

There seems to be quite a difference. Do you or Mohammed Qaadri represent the Muslim faith, or who does? Which group represents the true Muslims?

Reverend Bhagan: I do not think we have said we represented the Muslim faith. I said the members include religious leaders. You will see from the list of members on our committee, Ikram Makki is the Muslim representative. I cannot speak for the Muslim faith.

Mr. J. M. Johnson: So, if we have 10 presentations, we can have 10 different interpretations?

Reverend Bhagan: I cannot speak for 10 interpretations.

Mr. J. M. Johnson: But you implied you were speaking for the Jewish faith, the Muslims, the Catholics, the United church, the Anglican church, the Presbyterian, Lutheran, Baptist and African Methodist churches. I just do not think that is so.

Reverend Bhagan: Mr. Johnson, in the first paragraph of our brief it says, "The members include religious leaders..." I think that does not say we represent, rather we are saying the members of this committee include members of these churches and faith traditions. I am not saying who Mr. Makki represents, but he is a Muslim and sits on the committee as a religious leader.

Mr. Stokes: On a point of order, Mr. Chairman. I think that any members of the public who present a brief on behalf of themselves personally, or who choose to identify the group to which they belong, have a perfect right to be here to make a presentation.

It is a written brief. The honourable member who raised the question is entitled to draw whatever conclusions he wishes to draw from either the written or the verbal presentation.

I do not think anybody who takes the trouble to come and speak to Bill 7 should be subjected to this kind of harassment. He is here to make a presentation. The honourable member can draw whatever conclusions he wants, but I would ask him to refrain from any harassment of any witness who takes the trouble to come here.

The Acting Chairman: I have heard your point of order. I do not know that it is particularly a point of order, but you have made your point. The member has the right to ask him what questions he wishes. Do you have further questions?

Mr. J. M. Johnson: Mr. Chairman, I resent that remark from the former Speaker. Harassment is what this bill is all about. I have the right to ask a question about a member of the public who is making a presentation on behalf of several religious groups. I asked that as a point of clarification. If it does not meet with your approval, that is too damned bad.

Mr. Stokes: That is not what this presentation says. He has a right to advise of what group he is associated with. He is not coming here as a spokesman for the entire group. There is a very important distinction. That is the reason for my raising my point of order.

The Acting Chairman: I guess that is what the member is trying to clarify; whether he is representing a large group or is just there as an individual.

Mr. J. M. Johnson: Mr. Chairman, on a further point of clarification, I would like to just read: "This group, Religious Leaders Concerned About Racism and Human Rights, submits this brief as part of an ongoing effort to promote positive attitudes towards minorities in Ontario. The members include religious leaders..." et cetera.

I apologize if I am wrong. It was my understanding that you are making a presentation on behalf of the churches that you stated in the brief. Is that incorrect?

Reverend Bhagan: On behalf of the people on the last sheet. On page three of this brief is a list of the members of that committee. We are making this presentation on behalf of all those people listed.

9:10 p.m.

Mr. J. M. Johnson: On a further point of clarification, you are making the presentation on behalf of individuals of each of the the groups mentioned on the last page.

Reverend Bhagan: Who have called themselves Religious Leaders Concerned About Racism and Human Rights.

Mr. Stokes: You finally got it.

Interjection: Oh, come on.

Mr. J. M. Johnson: Yes, I finally did get it, sir.

The Acting Chairman: Have you any further questions, Mr. Johnson?

Mr. J. M. Johnson: No, not at this point.

The Acting Chairman: Mr. Sweeney.

Mr. Sweeney: I am referring to your second point on page two in which you indicate, "It is no longer appropriate for the commission to function under the Ministry of Labour." You indicate that because the primary areas of discrimination are no longer just in employment you are making this recommendation.

Is there any indication here that the Ontario Human Rights Commission, as it operates under the Ministry of Labour, is not operating in an appropriate manner?

Mrs. Kilburn: No, I do not think that is the inference

that was intended at all. I believe what we are trying to point out is that there is discrimination occurring in other areas--and specifically I think of housing as an area--and that perhaps it is inappropriate to continue that commission within just the Ministry of Labour as it is perceived as being only a labour problem, or an employment problem.

Mr. Sweeney: You would probably be aware of the fact, however, that there are a number of agencies of government that simply report to the Legislature--

Mrs. Kilburn: Yes.

Mr. Sweeney: --through a specific ministry. It is not intended to imply that the factors that agency deals with are only under the area of jurisdiction of the minister.

Mrs. Kilburn: I realize that is the intention, but I am not sure that is not the way it is perceived by some people.

Mr. Sweeney: So it is the possible conflict of public perception which concerns you.

Mrs. Kilburn: Yes.

Mr. Sweeney: Not the actual operation of the commission.

Mrs. Kilburn: Correct.

Mr. Sweeney: Thank you. That is all.

The Acting Chairman: Any further questions? Mr. Stokes.

Mr. Stokes: Yes, I would like to ask either one or both of the presenters to clarify for me your second recommendation where you suggest that the Ontario Human Rights Commission should not be under the auspices of the Ministry of Labour, but report directly to the Legislative Assembly. I do not know whether you are aware of what that implies.

Having just served for almost four years as the Speaker, where the Ombudsman reported to the assembly through the Speaker, as did the auditor, the commission on election expenses and the chief elections officer, I want to inform you that the only vehicle for bringing a report of the Ontario Human Rights Commission to the attention of the assembly is through the Office of the Speaker, who is just, more or less, a messenger boy--and that is not to downgrade the position of Speaker, that is an actual fact.

I think that perhaps you might want to rethink that because there has to be a ministry of the Ontario government that is responsible and responsive to the electorate for the activities and the decisions reached by the Ontario Human Rights Commission. You cannot rely on the Office of the Speaker to do that. That is really not their function.

If you suggest that the Ministry of Labour is not the appropriate vehicle for bringing that to the attention and

providing a forum for discussing the activities and the decisions of the Ontario Human Rights Commission, I think, with great respect, that you should find another vehicle rather than report directly to the assembly, because that is not the way we are structured. I am wondering if you have thought of that.

Reverend Bhagan: No, we have spent a long time discussing this. I think Susan has addressed the whole question of public perception. Then I heard a member here ask about the commission itself.

There is a feeling in the community that the commission can be doing more and the commissioners can be doing more. They were appointed by the government and if they speak out of line they will not be reappointed. There is a whole question of intimidation there under the ministry.

Our suggestion was that you have public discussion and public questions, or a forum where the public would be able to hear both sides.

Mr. Stokes: Let me give you a parallel, the Office of the Ombudsman, which is an independent body.

The Ombudsman himself is an independent person, free of any partisan pressure or anything of that nature. The Ombudsman's office reports to the assembly through the Office of the Speaker. But there is a builtin safeguard in the way in which we manage our affairs around here because we do have a select committee on the Ombudsman that takes that responsibility off the hands of the Speaker.

They review any reports and as a result of their review of the annual reports of the Office of the Ombudsman they, after due deliberation, report to the assembly, where there is an opportunity. Now, without a select committee on the office of the human rights commission, that would not be possible, and I just want to draw that to your attention.

Reverend Bhagan: I am glad that you have drawn that to our attention, Mr. Stokes, because we did not get into the structure. That is important.

Mr. Martel: I want to deal with item one because obviously it is an area that bothers a lot of people. I think they even have difficulty talking about it because if you talked about supporting what you are suggesting it is a belief that you are condoning what people are doing. There is a great distinction between the two. One does not have to condone homosexuality, but one has the right to be protected from harassment if one is a homosexual.

I suspect that is what you were attempting to say and I agree with you totally. I am not sure how one conveys that to some of my colleagues that that is what it is all about. There are those people in the press who, if you are opposed to the harassment these people undergo, immediately believe you are supporting the concept that it is the normal thing to do.

I could not help but recall a colleague of mine who was on a phone-in show one day and an interesting thing happened--to get into this question of gay rights. One of the callers was a female and she was very angry at the position my colleague was taking. So he turned it on her--because it always boils down to what is going to happen to little boys at the hands of male teachers. That is what the real fear is in our society.

My colleague said to the woman, "What about male teachers who might harass little girls?" I nearly fell off the chair as I listened; the woman responded, "But that is normal." That is normal in our society; it might be perverted, but it's normal. We expect that sort of thing to happen.

I was reading about a couple of interesting cases in England where it was female teachers who harassed or attacked little boys. That is normal too and people are prepared to accept that sort of thing. But on the other hand, the other ones, because they happen to be homosexuals, that is more perverted--if I can use that word--than if a female teacher goes after a little boy or a male teacher goes after a little girl.

We accept that and we are prepared to provide protection there, but we are not prepared to do the same for people who, in my opinion--and I am no expert in the field--who are born genetically different than some of us. People do not want to accept that as a reality of life or possibly upbringing in the formative years of children from one to seven, that you can influence severely whether a boy will turn out to be a homosexual, or vice versa.

As a teacher, I can recall students of mine who, as early as grade one and two, showed symptoms of being somewhat different, and who later on in life were gay. It shows up early, so I am not convinced that people make that determination just as a clearcut determination, "I am going to be homosexual." I do not think people do that.

9:20 p.m.

You get into this problem--and I am delighted to see the people who signed this, I really am. As a practising Catholic, I am absolutely delighted by what is there. We are not prepared to accept people who are born different to what we want to classify as normal and therefore we are prepared to see those people faced with all kinds of discrimination. The second you say, "But they have a right," then all of the taboos and the wrong attitudes--because they are homosexual they are going to attack little boys--all come to the fore. It really bothers me.

I guess it bothers me most when educated people do it. I can accept someone who does not read much having those attitudes, but I have great difficulty when people cannot make the distinction that we do not condone what they are doing, but we say they must be protected, as everyone else in our society should be protected.

I just want to sum up by saying I am delighted that you put that there. I am delighted by the group, the great variety of

religious denominations where people have the courage to stand up and say, "We do not condone it but, by God, they are entitled to the protection of the law just like everyone else."

I hope that some of my colleagues will see that very fine difference and change their attitude and say, "Yes, even though we do not condone it, we think they have a right to be protected under this legislation," and will change their intransigent position with respect to people who are gay.

I think it is offensive that someone, because of his sexual orientation, can be dismissed from a job or can be harassed in a housing settlement, or something like that. I just want to give you credit for having the courage to take a stand which I think some of your superiors might not agree with totally. But, none the less, you have had the courage to do it and I appreciate the fact that you have come here to this committee to make that presentation.

Mrs. Kilburn: The principle that all of us believe fervently in is that human rights are universal. They apply equally to everybody and you cannot make any distinction in their application.

Mr. J. M. Johnson: I have one more short question--and I even hesitate to ask it because by asking it I will be construed as being a bigotted, narrow-minded, hypocritical devil, but I am going to ask it anyway. You are a member of the Roman Catholic Church, a priest; are you allowed to marry?

Reverend Bagan: No.

Mr. J. M. Johnson: Are women allowed to be priests in your church?

Reverend Bagan: No.

Mr. J. M. Johnson: Are we talking about discrimination?

I do not want that to be construed in any other way. There is no one criticizing your church. I am simply bringing out a point that we in society, and members of this committee, should accept. We are talking about discrimination and we are talking about Bill 7. There are many implications. This is one of them.

Mr. Stokes: It is just like saying that to be able to sit in the assembly on the right hand of the Speaker you must be a member of the Conservative Party. Now that has just about as much relevance as the question you asked.

Mr. J. M. Johnson: Possibly that is so.

Mr. Kerrio: I think it helps, Jack.

Reverend Bagan: I think all I would like to say, Mr. Chairmān, referring to that question, is that there is a lot of debate and discussion going on in the Roman Catholic church around women's ordination. I do not think anyone I know of in the Roman

Catholic church, my friends and my peers, would discriminate against women. I think the people I rub shoulders with would love to see some women being ordained.

I do not think that is the issue. The issue is not that we are discriminating against women. I personally have no problems with that, just as I have no problems with protecting the basic human rights of people.

When you talk about human rights, a homosexual has a basic right to peer protection in jobs, in housing and education. He has a right to be treated just as a heterosexual. If his sex gets into the way, just as with a heterosexual, fire him in the same way. But the concept is protection of basic human rights.

The Acting Chairman: Further questions. Vince?

Mr. Kerrio: I have difficulty with this gay rights movement and everything about it. I make no apologies, because I feel that in many instances when you talk about rights, you really take them from one group and give them to another.

I would like to know where my rights as an employer rest when I decide that, for whatever reason I might have--if I think that homosexuality is a perversion--I do not want homosexual people on my staff, but I am forced to hire them; then you are taking a fundamental right from me.

If I decide that I have the kind of business where I would like to have a preferential-type individual represent me, and I provide jobs and I do things in my society that I could be pretty proud of, I have difficulty having someone tell me that I must do something.

I appreciate the fact that they should not suffer harassment; in fact I accepted wholeheartedly the decree from the federal government that behind closed doors these people could do what they want.

I find it very difficult, and I do not know whether I just do not have enough information--and I say this very sincerely--but I have a very distinct feeling that we are going so far with rights that we really are transferring them.

In many instances, the people who built this country earned their rights, and I like to think that I and my family fall in that category. I cannot believe that we are going to reach a point where there are no decisions left for me at all, that I would have to accept anyone who presents himself, regardless of what he may have in the way of what I consider a perversion, which he may think is just an alternative lifestyle. I do not accept that, and I never will and, as I said, I have difficulty.

I go along with the fact that they should not be harassed. I think that is inhuman, I will buy that. But I really feel deeply--and I wish someone could prove to me that I am wrong--when I say that is just a transfer of rights; you take them from one person and give them to another.

Mrs. Kilburn: May I comment on that?

As a fifth-generation Canadian, sharing perhaps some of your background; and also as a woman, who until 1929 was considered a chattel, a possession of somebody else, we have come a long way. I do not think anybody says it is going to be easy, but I do think that we have to earnestly follow a principle that is a principle, period.

I truly do believe that we have got to, if we are earnest and honest in our approach to all humanity, treat each person equally.

Mr. Kerrio: I do not think we are treating people equally if four grown men with handlebar moustaches come to our gallery and start embracing. I think that is vulgar display and what they are trying to prove sure falls short of any kind of proof to me.

I think that many people who support this movement have a really difficult time supporting people like that, because reasons that are offensive do not make their case in any kind of fashion.

Mr. Martel: You do not have to condone what they are doing and you might find it reprehensible--and many of us do--but that is not the issue.

Surely the issue is that although someone is homosexual, as long as he is doing his work for you in the way you want it performed, and he or she does everything you want him or her to do--and you just said you what they do behind closed doors is acceptable--why should you be so concerned? If he is doing the work correctly and he does behind closed doors what you say, why should you say, "But I don't have to hire him"?

Mr. Kerrio: Because his way of life is offensive to me.

I think you might extend this. Why do you not let them practise bestiality? Why do you not go all the way, let people do their whole thing?

Mr. Martel: But many people are doing it now and they are not being fired for it.

Mr. Kerrio: No, but I say where are my rights as an individual if I presume--I am willing to suggest that I might be entirely wrong, but what if I decide that I should not have to do that, that it is against my principles?

There are people in the church who do not agree with this.

9:30 p.m.

Mr. Martel: But should the hiring of an individual be based on his ability to do the job, or should it be based on his sexual orientation?

If he does the job for you adequately, as well as anyone

else, should you then be in a position where you say, after you learn about it--and I suppose you have had homosexuals work for you without knowing it, because--

Mr. Kerrio: They would have had to work for me without my knowing it.

Mr. Martel: Okay; and if they performed--the question I am--

The Acting Chairman: Committee members, do you have more questions for the people before us?

Mr. Kerrio: In any event, you understand my problem?

I want to say, with all respect, that of the human rights in the bill, that is one part I just cannot accept. It is impossible for me to have people like you tell me that we are not just transferring rights, when you take the right from me to decide that is an offensive lifestyle--as wrong as I might be by making that determination--and that I should have to accept that person in my employ, or in my apartment or in my life.

That is not the only one. I am only pointing that out, because that happens to be in the bill. Rightly or wrongly, there are people who I do not associate with--and I am not setting myself up; I have all the difficulty in the world practising my religion and do what I am supposed to do to try to be a good Christian, but let us set that aside for the moment.

I am just saying that I want to have the choice, not only in this, but maybe in other areas, of who I want to have in the kind of company I keep, on the job I am doing. I just tell you frankly that if we go so far as to say that every individual--regardless of their lifestyle, marital status--should be fully accepted by anyone, I suggest to you that a great many more people are going to suffer in this society and community than will be helped by this kind of a bill or amendment.

Reverend Bhagan: My only response to that is--I heard you mention the transfer of rights. I do not know what you mean by that. We are not suggesting that rights be transferred. We are suggesting that your basic human right is--if four heterosexuals met and kissed up in the assembly, would that offend you as much too? Do they have a right to that as much as anybody else?

Mr. Kerrio: It depends what they are doing to offend me. I say that was offensive to me, what those birds were doing there. I have to tell you, I think it was embarrassing to the people who would support them.

Reverend Bhagan: That is the first point I want to make.

The second point is, if someone is teaching or working in your company, do you hire them because they can do a good job, they come to you with certain skills, or do you hire them because they look different, they smell differently, they dress differently? Are those the criteria, or do you hire them because

they have qualifications to be a good worker? I think those distinctions have to be made.

Mr. Kerrio: Maybe it is a human frailty of mine that, as a person who employs people, I think I still have a few rights as to who I want to hire.

If that is the main criterion, then I am willing to sacrifice a little bit of the job. I have spent many hours working on the job, and a great deal of the association with my workers was a pleasant one. I could do nearly anything my workers did and I was there with them; I spent a lot of my time on the job and I would like to have the choice as to who I spend my time with, just as I would like to have a choice if I send my little boy to the Boy Scouts. I certainly would not want go to pick him up and find some bird attempting to explain his way of life to my seven or eight-year-old son.

I would like the option, whether it be in the schoolroom or the Boy Scouts, or wherever--I tell you, I think you are taking away my rights when you decide that I should not have a thing to say about who fulfils that role.

I think we have gone already too far without going this distance.

The Acting Chairman: Mr. Gillies, you had a question?

Mr. Gillies: Very briefly, Mr. Chairman.

I have to say, I have a bit of a problem following the argument from my colleague from Niagara Falls in that he said, I believe: "Why should I have to do this? Why should anyone have to tell me that these people are within the pale or beyond the pale?"

Surely the whole principle of human rights is that certain things have to be legislated that perhaps otherwise would not be. Why should you have to hire handicapped people? Why should you have to hire a member of a minority group?

Perhaps what we are really talking about here is rather than following society, government is leading society in providing this type of guidance and framework so that we will have a more humane society. I do not quite follow your argument.

In questioning the witnesses, I have to think, if human rights are truly to advance in our society, it is not just a job of government; it is equally a job of other sectors in our society that provide leadership. While I appreciate you are here as individual members of a committee and that you are not necessarily representing the churches I see listed on the back page, could you give the committee some sort of indication of the type of leadership that is being shown in these areas--one to four--by the religious sector in our society?

Mr. Kerrio: Do you want them to answer before they answer the question you raised with me?

Mr. Gillies: I am sorry, I was making a comment, Vince.

Mr. Kerrio: Well, you left several loose ends. I just thought you were taking a little unfair advantage. I think that I should answer the--

The Acting Chairman: Please.

Mr. Kerrio: Then, they should not make them and should just direct questions to the witnesses.

The Acting Chairman: Behave yourself.

Mrs. Kilburn: Mr. Chairman, if I could just make a comment from my own denomination, which is the United Church of Canada: It is quite true to say that the opinion goes from one pole to the other across our church. I think that is probably true of most denominations. Certainly, our denomination has prided itself on its freedom of thought. It is part of our heritage.

However, I would say also that the national leadership of my denomination has stated on many occasions--and probably most well known through the person of Clarke MacDonald--their stand on human rights, that they apply equally regardless of sexual orientation or other bars to discrimination. I feel that that can be substantiated. Now, I do not claim that that is held across the church at all.

Mr. Gillies: I have to say that in asking the question I was not referring specifically to sexual orientation.

I would have to confess to you in my church-going, I have yet to encounter a clergyman who has a visible physical handicap. I wonder if there is any sort of affirmative action program, if you will, within the church to promote such people. If there is, I am afraid I have not seen it.

Reverend Bhagan: I think you were asking of our five concerns. There was a fifth which was not listed and that is what you were asking us to respond to.

Starting with item one, gay rights: Of all the churches represented here, one segment is in favour of it and some not. The leadership in the different churches is honestly divided in that some are in favour and some are not. So we are not coming here and saying that it is a package deal for whatever reasons.

Item two, the whole question of the human rights commission: The leadership in the churches mentioned is very concerned. I am a Roman Catholic from Toronto and our own cardinal here, as you know, has taken leave and chaired a committee recently around the whole question of minorities and the police and the whole question of human rights.

Item three, affirmative action: This is something that is a concern. The leadership of most churches is concerned about that to some degree. I do not know how far because that varies between every denomination and every church, even down to the local parish level. In the parish I am in, we put in a ramp, we have black people, minority people, chairing the parish council and we are

encouraging that. I know that has been encouraged in the Roman Catholic church, the Anglican church, the United church.

9:40 p.m.

Item four, race relations division: I can speak of that personally because I chaired a consultative committee on race relations that works with Race Relations Commissioner Dr. Ubale. I can speak of the frustrations I have put up with in the last year because of the human rights commission, because Dr. Ubale did not have the necessary budget and because he, himself, has been frustrated as race relations commissioner. So I speak out of practical experience.

I cannot see how the government can appoint a race relations commissioner, give him an office, provide him with a staff and every time he wants to do a program, he has to fight to get money.

Susan is also on the consultative committee that is working with him. The last 12 months have just been hell, trying to get any kind of race relations program and funding from the human rights commission. That is why we are suggesting, shall we?

Our fifth point was the whole question of visibility across Metro, because minority communities who are discriminated against are intimidated at 400 University. To begin with, it is a big building and they cannot find it. If the government is really committed to the struggle for race relations, then they will provide the facilities not only minorities, but for everybody.

Mr. Gillies: I guess the point I wanted to make--I hope you will agree with it--is that if the human rights movement is to work, if it really is to go ahead, then it requires leadership not just from the government but from other leadership sectors in society. I raise the question of the church in view of the makeup of your delegation.

Reverend Bhagan: We are providing that, I think, on our consultative committee working with the race relations commissioner. We are mobilizing at the local level in doing that, because I think that is where effective change is going to have to happen too--in the private sector and in the churches. But I think the government has to provide a very important leadership role, and put some money that is committed to it, too; not just to appoint a commissioner, but to give him a budget so that he can do effective work with the voluntary sector.

Mr. Gillies: I guess, Mr. Chairman, I am taking my direction from you in terms of putting my questions solely to the applicants. But in fairness to Mr. Kerrio, I would certainly like to be on the record that I would favour a chance for him to respond to my comments, because they were certainly directed at his--

The Acting Chairman: He can respond to your comments afterwards.

Any further questions of the delegation? I thank you for coming before the committee and for your brief.

Our next delegate is Alan Borovoy, Canadian Civil Liberties Association.

Mr. Borovoy: Would it be all right if I bring company with me?

The Acting Chairman: Yes. Would you give the names of the people who are with you for Hansard, please. Do you have a brief to hand out to the members? Perhaps you could give them to the clerk.

Mr. Borovoy: Mr. Chairman, as we are in the process of doing that, I will introduce my colleagues to you.

On my immediate right and your left is our president, Professor Walter Tarnopolsky, himself a member of the federal human rights commission. He has been our president for a number of years. On my far right and your more immediate left is Allan Strader, the research director of our organization. In between is Noordin Nanji, a research associate who did some work helping us to prepare this submission.

Mr. Chairman, my sense of things tells me that I should not attempt to read all 17 or 18 pages of this brief. I have become sensitive as I have got older. Rather than do that, I thought that I might go through this with you, summarizing some of the salient points, and leave you with a written memorandum of the bulk of what we have had to say. Then we would look forward to your questions.

The Acting Chairman: We appreciate that.

Mr. Borovoy: That may be the thing you will appreciate most. The first topic we come to is what we call, "reducing structural inequities." Here, if I may, I would like to share with you some of the experience of surveys the Canadian Civil Liberties Association has conducted over the past number of years. You will see them summarized on page one.

For the year 1976, we did a survey of promotions in the corporate sector by scrutinizing the Financial Post of that year and examining announcements of promotions that had photographs attached. We were advised by people in the know that that is a reasonable barometer of corporate practice. We found that out of 1,913 promotions and appointments that were made in this way, no more than six were awarded to nonwhite people.

In a 1975 survey of the Toronto City Fire Department we found that there were only two nonwhites out of more than 1,100 firefighters, in what I am sure you will realize is very cosmopolitan Toronto. Of 235 senior positions in the Ontario government, our 1976 survey found only three nonwhites--one black and two of Japanese extraction, but not a single native or anyone of East Indian or Pakistani origin.

Just a couple of years ago we did a survey in the communities of Kenora, Fort Frances and Sault Ste. Marie. We looked at positions in the banks. Bearing in mind that you have very large number of native people living in and around those

communities, we found that out of the 500 banking positions we looked at, only two were held by native people and one of them was only part-time.

We do not necessarily draw the inference that all of this can allow us to identify a practice of racial discrimination in any or all of these establishments. However, I would be very surprised if discrimination did not account for at least some of the results we found. There could be other factors. It could be, in a number of cases, the parochial or outmoded recruitment practices employed by various employers and personnel departments.

Indeed, that is something we found in the Toronto fire department and as a result of that, they completely abandoned an approach they used to use for recruiting firefighters. Or it could be that many nonwhites in these communities will not even apply for these jobs in the belief that they will experience discrimination. Rightly or wrongly, generations of discrimination, of isolation from the mainstream of the community, develop in a lot of these people the belief that they will encounter discrimination.

It is our view that what you are left with is a position of substantial under-utilization of key segments of the community in very vital areas of the economy. We submit that a situation like that should not go on. But the traditional methods of complaint enforcement are not going to be enough to deal with it. You will not get enough complaints in the first place because these things will just not arise on enough occasions to make it worth while.

In addition, complaint enforcement does not address the inertia, the reluctance to go looking for some of these jobs in many communities. It does not encourage people to come forward when they have a belief, right or wrong, on reasonable grounds, that they are going to encounter discrimination.

9:50 p.m.

We feel that something more has to be done. I think this has been recognized by the Human Rights Code to date in the whole notion of affirmative action programs. This concept of affirmative action has been in the Human Rights Code for a number of years, and yet the number of racially centred affirmative action programs is almost negligible, despite all the surveys, despite what I submit is the logic of the analysis and despite the provisions of the code itself.

What we are suggesting is that the new code ought to contain some kind of incentive for a sensible affirmative action program. One of the incentives we are recommending is the concept of contract compliance. In recognition that the government lets hundreds, perhaps thousands, of contracts every year, we suggest that the Human Rights Code contain a provision requiring employers, as a condition of enjoying such contractual benefits from the government, to agree to adopt a number of good-faith measures designed to break this vicious circle that I have referred to.

What do we mean by good-faith measures? I will be as specific as I can for the moment. We mean things like when you are advertising, say in your advertisements that this is open to all races, creeds and colours. Don't wait for people to come to you. Say that is your policy. So you are inviting, you are starting to break the barrier.

It might mean going to the leadership of nonwhite organizations--I think we should say this is not only for nonwhites; it could also be for women's organizations or handicapped organizations--and asking them to recruit suitable candidates for available jobs. Make moves of that kind.

If you are, say, around an Indian reserve, go into some of the friendship centres in the Indian reserves, meet with the people and ask them to apply for jobs. Imagine the psychological effect in those native communities, who have experienced the isolation we all know so well, if people went into those places and said, "We want you to apply for jobs and here are the jobs we have open." Take those initiatives.

Where there are subsidy programs for on-the-job training, agree that a certain number of the jobs will be open for subsidized on-the-job training.

This what we mean by good-faith measures. In order to meet whatever questions may arise in your minds, we are not suggesting quotas; we are not suggesting reverse discrimination. We are simply suggesting a number of good-faith measures that are designed to break the barriers of generations of discrimination and isolation.

I suggest that kind of provision to the Human Rights Code should have a section authorizing that kind of provision to be written into contracts with the government and be enforced by the Ontario Human Rights Commission through boards of inquiry and that they then monitor compliance with those contractual provisions.

As far as public sector employers are concerned, the suggestion is that the commission be explicitly mandated to review the hiring practices and the state of these good faith measures on the part of municipal councils and the various ministries of government, and that they be in a position to make recommendations to the minister, to the municipal council concerned and to report to the Legislature where they feel there is a lack of requisite performance on the part of various government agencies. That is the first part. We do see the structural inequities.

We go from there to auditing the intermediaries. Here we are talking about the experience we have had, of which you may be aware, with respect to employment agencies.

The Canadian Civil Liberties Association has conducted at least three surveys--I mention those to you anyway; we have done a lot more--of employment agencies in this province over the past few years. In every case, the method we used was to telephone the employment agency and assume the role of an employer, or the representative of an employer, who was planning to locate in their

community, a few weeks or a few months hence, and the call was simply designed to find out what service the employment agency would render for the employer.

One of the questions invariably was, "Would you agree to refer whites only?" In 1975, out of 15 agencies surveyed in Toronto, 11 were prepared to accept discriminatory job orders. In 1976, out of 15 employment agencies tested, five in Hamilton, five in Ottawa and five in London, again, 11 were prepared to accept discriminatory job orders.

Most recently in Toronto we did this as part of a survey that was telecast on CTV's "W-5" program in early December, but at least in the results of 10 such agencies that we telephoned in Toronto, the response was that only one clearly said no, and as many as seven expressed the willingness to abide by a whites-only request and the remaining two were somewhat vague but did not refuse.

I think again we have to understand that the traditional method of complaint enforcement is not going to help with employment agencies. Because the difficulty is the nonwhite person, the minority group member, who goes to an employment agency simply does not know all their clients, so if he is bypassed, if he is screened out, he will never know it. So, he is not in a position to file a complaint. You therefore have a situation where you can have discriminatory practices conducted with impunity.

We therefore suggest that the only way to deal with this is to have ongoing audits performed by government agency, preferably the Ontario Human Rights Commission, which is able to go into these business establishments and say to the employment agencies, "We would like to look at the records, the applicants, your clients." Then they would be able to investigate whether they are complying with the Human Rights Code. Our suggestion is that there simply is no alternative if you are serious about getting at discrimination in that area.

We suggest, too, that there should be really no reluctance about this. Law Society auditors are entitled to insist on the production of lawyers' trust accounts as a condition of them doing business, as a condition of their licences. Our suggestion is that there be a right, a power of the commission, to require them to make such records available as a condition of their licences.

I note, in this respect, that Labour Minister Elgie did say, a little while after our December 1980 survey was made public over "W-5," that he was intending to make a recommendation that the employment agencies have to keep fuller records so that they could be amenable to this kind of audit. He may be suggesting that for the Employment Agencies Act; that is not clear.

While there is no particular objection to having it there, what we are concerned about is that it be somewhere. But believing as we do in the bird-in-hand philosophy, we would suggest it be done now through the Human Rights Code because this is an appropriate time to deal with a long-standing problem that has

been made public on numbers of occasions without satisfactory rectification.

I go on from the problem of auditing the intermediaries to the problem of promoting reasonable accommodation, and here, first, deal with the problem of handicapped people.

10 p.m.

As we read the provisions of the new bill--and I might add paranthetically that one is always in some difficulty; no matter how many times one reads these bills, different interpretations become possible--it appears that though there is a requirement for employers to make a reasonable accommodation that does not impose an undue hardship or undue cost on them, to accommodate a handicapped person, that will only arise by way of a board of inquiry order after a finding of discrimination is made.

You may then have a Catch-22 situation operating because, suppose a handicapped person has no way to get into the building, then arguably he may fit under section 16 that says he is not capable of doing the job. But just postulate a situation where with little cost the situation could be remedied; he will never get a finding that he has been discriminated against and so no order could ever ensue.

We are simply suggesting that this may be an inadvertent or unintentional Catch-22. If it is intentional, we regret it. If it is not intentional, this is the time to correct it; and we would suggest that the bill simply make clear that a finding of discrimination may be made with respect to handicapped applicants if there is a failure to make a reasonable accommodation in order to effectuate their access.

In that connection we would also suggest that with respect to any structures that are built after the code comes into effect, and if those structures lack suitable access, they could be ordered at their own cost to make whatever alterations are necessary to ensure access by handicapped complainants.

The problem of reasonable accommodation, of course, goes beyond the handicapped. It could also apply in the case of a religious or cultural minority.

Suppose, for example, you have a Jewish or Seventh Day Adventist employee who is told by his employer, "I do not want you any more because you cannot work Saturdays and it is a condition of business here that every employee has to work every second Saturday." This employee may be able quite easily to get others to switch shifts with him. Arguably he would have no remedy under the code if that were to happen. I say "arguably," but I think we ought to be clear now.

The difficulty may be that this employee is not under section 10 challenging the general job requirement of working every second Saturday. That is a perfectly reasonable one in the circumstances. He is simply asking the employer to accommodate his

particular situation, let him off the hook if someone is willing to work the Saturday for him.

So we are suggesting, in view of the heterogeneous nature of the province, that employers be required to make reasonable accommodations to religious and cultural minorities in those kinds of situations as well. There is, I might point out, a clear precedent for this kind of thing. Even in the American legislation it was added after the courts showed an initial reluctance to put it in.

I go from there to the section we call, "reducing excesses and loopholes." In some respects the draft code attempts too much and in some respects too little. Let me try the too much for you first.

Section 12 effectively prohibits dissemination of material which not only indicates an intention to discriminate but also that which advocates or incites such conduct. Our concern is with the effect of the word "advocates" in that context.

Suppose, for example, someone who disagreed with the Canadian Civil Liberties Association--I always like to posture as one who protects the civil liberties of our opponents as well--was running for an election and said he did not agree with the Human Rights Code, he wanted it abolished because racial discrimination is morally permissible, it is a good idea. We do not like that, but should we say that he should not have a right to say it in a democratic society?

I submit that when you talk about material--and this is the trouble with the section. It talks about the dissemination of material which indicates an intention to discriminate, or which incites or advocates.

I suggest in that context, the word "advocates" may go well beyond what the legislative draftsmen might have intended. So we suggest to you that mere advocacy ought not to be an offence. In fact, it is questionable whether it is even constitutionally permissible for the province, under existing circumstances and who knows what, if and when the charter comes into effect.

We also say that the code does not attempt enough. I have dealt with an excess; let me deal with a loophole. One of the loopholes has already been the subject of some discussion here tonight. At the risk of provoking some of the discussion all over again, it would be our suggestion that the homosexual community receive explicit protection against the unwarranted discrimination they suffer as well, particularly when all of these additional constituencies have been added for protection by the Human Rights Code, their suffering and their grievances are a matter of record. It is simply no longer acceptable to exclude them from these protections while others are receiving it.

There is a point here at the bottom of page 10, where we talk about people over 65. Whatever argument there may be for not wanting to include in the Human Rights Code some redress in the employment situation for people over 65, surely that would not

apply to the enjoyment of services, goods and facilities or the occupancy of accommodation. I am assuming that is a draftsman's oversight and suggest that be corrected as well.

While I am dealing with excesses and loopholes, I would like to draw to your attention a couple of matters that do not appear in the brief. Mr. Chairman, the difficulty we have, as I indicated earlier, is that almost any time one picks up a statutory document one sees something there that one did not see the last time. I am afraid that is going to continue, but I want to catch a couple of things we did not catch when the brief was published.

First of all, there has been some mention of section 30 with respect to the powers of entry and search. In general, the Canadian Civil Liberties Association does not object to a warrantless power to enter and inspect records. But there is something that is employed in this section that may go beyond that, which I think may create a bit of a problem.

In subsection 4 one sees that there is an opportunity for the Ontario Human Rights Commission to get a warrant to search a dwelling house. The question is, does the warrantless power of entry and inspection of records, in a place other than a dwelling house, include a power to search the premises?

10:10 p.m.

I point out to you, here you have a power to get a warrant. We have seen no mention of a right to get a warrant to search a place other than a dwelling house. So I suggest to you that you could have two rather untenable results. One is a warrantless power to search, that is to ransack a place, other than a dwelling house--that, I submit, goes too far--or there is no power even to get a warrant to search a place other than a dwelling house. That is anomalous if they can get around to search a dwelling house.

That leaves us in a state of limbo and the way we would rectify that is to be quite clear that the power to enter and ask for the production of records does not include a power to ransack the place without a warrant.

The other possible loophole may be a question of language. Suppose a person were denied a licence--a licence to operate a taxi or a liquor licence, say--on a discriminatory basis because of his race. As I read the draft bill, there may be no redress against that. I am not sure there is any section that would adequately cover that. I cannot believe that was the legislative intention.

It talks about membership in self-governing professions, which a liquor licence is not. It talks about goods and services and perhaps even the right to contract. But that, in our view, is not clearly enough addressed to this kind of situation. We suggest there should be something there.

Coming back to the text of the brief, on the subject of approving the adjudications we said boards of inquiry should have the power to admit parties other than those immediately involved

to make representations. As an organization we have been admitted to royal commissions, in the Krever commission we had full standing; we have intervened in cases in the Supreme Court of Canada and in the Ontario Court of Appeal in our own name in advancing our unique interests.

We do not think that the Canadian Civil Liberties Association is unique. Boards of inquiry are often dealing with issues of vital interest to the entire community. The coincidence of who got there first should not conclusively determine who should have a right to participate in the proceedings. A discretion should be given to boards of inquiry, just as courts have it, to admit other parties if they think those parties can help in their deliberations.

We suggest also that members of the boards of inquiry should have more of the concomitance of independence than they now do. What happens is the minister, under this bill, can appoint a panel, but there is no security of tenure and there is no guarantee that a person appointed to the panel will ever be called upon to sit. Indeed, the minister controls who sits in any given case. That looks something less than fair when the government can choose who the judge is going to be in any case.

Mr. Kerrio: That is not uncommon with the Tories.

The Acting Chairman: Some people are given that responsibility, Vic.

Mr. Kerrio: That is fair. Those are realities worth taking.

The Acting Chairman: Right.

Mr. Borovoy: While I always appreciate a supportive intervention, Mr. Chairman, you will appreciate that I have avoided that kind of partisanship.

The Acting Chairman: That is right.

Mr. Borovoy: In any event, our suggestion is that members of the boards of inquiry have tenure, that they have a lengthy term of office, that they cannot be removed except by a procedure something like you would need to remove a judge, and that the selection in each case be done differently. It could be done the way it is done in labour arbitrations by agreement among the parties. It could be done by letting the panel themselves choose who will sit. It might even be done by lottery. We are not particularly wedded to the alternative, as long as one of the parties does not have the unilateral right to make the choice.

Having said that, we move on to the next part and suggest to you that the right to appeal decisions of boards of inquiry is far wider than it ought to be. At least on questions of fact there is no need for a right of appeal. One may even question it further, but let us at least say that rights of appeal on questions of fact really are not necessary. The boards of inquiry who see and hear the witnesses are usually in a much better position to assess credibility and make factual determinations.

10:15 p.m.

Indeed, if one looks at the jurisprudence where boards of inquiry have been reversed by the courts, it is questionable as to where the greater wisdom lay. I have no difficulty putting to you that on a couple of cases the board of inquiry's decision was the better one. We suggest that there is no need for that wide a right of appeal.

We talk about adjusting the sanctions. Consistent with the whole thrust of the Human Rights Code, conciliation is the idea. What we are trying to do is get the offender to change his policies. We know at some point there needs to be enforcement. So you have a board of inquiry that has the power to order the person, the offender, to change his practices, to make restitution, to make good on the discrimination that he has committed.

That is ample power and it needlessly clouds the issue to have the criminal process operating here. Remembering that those board of inquiry decisions can be enforced as orders of the court with the power of contempt, surely that is no reason to have prosecutions for fines after a situation where a person can be ordered to change his practice. The idea of all this is essentially to change the practice, not primarily to punish the offender.

Apart from such areas where you obviously need some kind of criminal sanctions such as harassment, or the obstruction of complaint investigations or something of that kind, we suggest that by far the better remedy--and it ought therefore to be the exclusive remedy--is the board of inquiry.

I say the exclusive remedy, because there is always some chance that somebody will come along before a board of inquiry and say there is a right to prosecute, "You should be doing that before you bring me before a board of inquiry." Such arguments have been made. Though I am not suggesting that they always be accorded the weight that they always be acted on, the danger is there and it is a needless danger. The boards of inquiry ought to be carrying the thrust of that enforcement.

The one final thing about the sanctions, an obvious one, is that it ought to be clear across the board that people who violate the Human Rights Code ought to do so in jeopardy of losing their licences to continue operating those businesses.

Finally, the human rights commission must be and must be seen to be, independent of government. We suggest, therefore, that members of the commission have a much longer tenure than two years. That will appear to be a situation where they are currying favour with the government of the day in order to have an opportunity to succeed themselves. They should have longer terms and they ought not to be removable within those terms unless there is cause in some procedure, again, akin to what you have for provincial court judges.

The staff of the commission has to be removed from direct

civil service control, because you could have the staff of a commission trying to investigate a discrimination complaint in a ministry where he has to investigate his employment superiors. We suggest that, by appearance anyway, that is going to create an impression that you are not going to have a really proper investigation, that they are going to be intimidated when they have to investigate their employment superiors.

You could also, of course, have a conflict. Who controls their everyday conduct? Their employment superiors in the civil service, or their non civil service superiors in the human rights commission? Our suggestion is that they ought to be removed from the civil service hierarchy--in anticipation of what Mr. Stokes asked one of our predecessors here, not suggesting necessarily that they report through the Speaker--I would not want to burden your successor that way; rather, that they report directly through a minister without civil service intermediaries.

10:20 p.m.

I am sorry for the length of time it has taken for this, Mr. Chairman, all of which is respectfully submitted. Perhaps Professor Tarnopolsky would like to embellish.

The Acting Chairman: Thank you for the fine presentation. I am not sure that abbreviating it was shorter than reading it. Mr. Johnson, you have a question?

Mr. J. M. Johnson: Yes, I have four. At the bottom of page 12, you suggest denying the right of appeal to the courts because of procrastination. How about justice?

Mr. Borovoy: That may beg the question between us. I do not necessarily assume that justice is more appropriately meted out by independent adjudicators called judges than by independent adjudicators called boards of inquiry, assuming that the boards of inquiry have the requisite concomitance of independence.

That, of course, is what we have asked for when I suggest to you there is no reason to assume that justice necessarily comes more from a person with a robe than from a person without one, assuming they are both sufficiently independent. But you will recall we were saying that only on questions of fact, not on questions of law.

Mr. J. M. Johnson: In item 15, page 18, you state, "Provide that anyone who violates the Human Rights Code may lose temporarily or even permanently his licence to operate the business..." What are you talking about? What about a small retail merchant? Does he have a licence?

Mr. Borovoy: This obviously could only apply in cases where people have licences. What we are suggesting is for those business establishments that operate under licence--in some areas I am sure this already applies--it be made explicit across the board that all of them could have their licence privileges revoked or suspended if they are found in violation of the code.

Mr. J. M. Johnson: But this is discrimination in itself. You are saying that some types of businesses creating an offence are subject to losing their licence, and another type of business that does not have a licence would not be penalized in the same way.

Mr. Borovoy: Well, I am suggesting to you that you apply remedies appropriate to the circumstances. I suggest that you may have in some cases certain business establishments which are amenable to larger penalties than other business establishments because they are bigger. Certain business establishments are amenable to certain restrictions because of size.

There are all kinds of reasons we do that. I am simply suggesting to you that where there is not a possible way--if there were a possible way, I would have to objection to it--where people are operating under a licence granted by the state, that licence should carry with it an obligation that they observe certain laws. That would seem to me to be elementary equity.

Mr. J. M. Johnson: I cannot accept it. But with regard to section 30(3) of the minister's bill, pertaining to search without warrant, you touched on this earlier. I would have to think that as a member of the Canadian Civil Liberties Association, you would be very strongly opposed to a search without warrant.

Mr. Borovoy: What I said, just to come back to my words, if I was not clear, is that I was opposed to search without warrant and therefore suggested that this section be clarified in order to ensure that there is no power to search without warrant. What I am not opposed to is the power to enter and require the production of records without warrant.

Mr. J. M. Johnson: Why?

Mr. Kerrio: It is very clear in the section.

Mr. J. M. Johnson: What is very clear? What is the disadvantage of getting a search warrant?

Mr. Borovoy: Do you mean to enter and to look at documents?

Mr. J. M. Johnson: I just happen to think that you should have a search warrant for a fact of any nature. Do you condone the fact that because there was a possibility someone could be engaged in narcotics or in some other illicit trade, a search could be conducted without a warrant?

Mr. Borovoy: Perhaps I can answer your questions consecutively, rather than concurrently. Let me try to deal with it this way.

As far as the Human Rights Code is concerned we always have to make distinctions. In my view you do not say you need a warrant for anything. It depends on what we are talking about. I think we have to be much more precise. What I am suggesting to you is that the power to enter a business establishment and look at

records--that is what I am talking about--for that I would not require a warrant, although to search the premises I would.

You ask why I make that distinction. You need a certain amount of evidence to get a warrant. You have to demonstrate reasonable and probable grounds.

Mr. J. M. Johnson: What is the matter with that?

Mr. Borovoy: I will tell you what is the matter with that. The greatest number of human rights complaints are usually the unverified and unverifiable suspicions of complainants. They are people who have had certain experiences with employers and believe they have been discriminated against, but they do not know.

It is almost unique in our law, although not totally, that this is one of the few areas where you do not have witnesses. You do not have people who have seen the discrimination. It is not like an assault where you have informants. It is not like a bank robbery where you have witnesses. Whether there has been discrimination is all in the mind of the discriminator. Unless you can look at his records which tell you who else he has seen, who else he has been interviewing, who he has hired, you can rarely get the evidence you need even to apply for a warrant.

What we say, therefore, is that in that limited context where we are talking about examining business records, then we permit a warrantless examination. This is recognized in other areas of the law as well. The Law Society may look without warrant at the trust accounts that lawyers keep, simply to monitor, to audit their compliance with their trust accounts. I believe that employment standards investigators can do likewise, for the reason that many of those statutes are inherently unenforceable unless there is an opportunity to look at records.

Mr. J. M. Johnson: I am at a loss to understand your rationale.

Mr. Borovoy: Could I ask you, if you do not mind--you say you are at a loss to understand it. Might I ask you what the difficulty is with my analysis?

Mr. J. M. Johnson: For the simple reason that if a person is suspected of murder, you would not condone it, would you?

Mr. Borovoy: I would not condone a warrantless search against a person suspected of murder--

Mr. J. M. Johnson: But for prejudice you would.

Mr. Borovoy: --for the reason I gave you. Again, if you could just follow, the reason is that with most of the crimes that you are talking about you have witnesses, informants--you do not always have them, I agree; but most of the time you do--and that is what gives the police the threshold amount of evidence they need to apply for a warrant.

You cannot just get a warrant by saying, "I want one." You

have to demonstrate reasonable and probable grounds to believe that those premises contain what you are looking for.

The point is that in a discrimination case, almost unique in a discrimination situation, all of the evidence is in the mind or in the records. You do not have witnesses. It is very rare that you have informants and witnesses because only the person who has denied you the job knows why he did it. So unless you can look at that, you simply have no way of enforcing this legislation.

I submit to you that makes it different from other situations. We are not doctrinaire in this world. We always have to evaluate the necessity against what it is that we are concerned about in any given situation.

The Acting Chairman: The time is 10:30. Would the members of the committee wish to have these gentlemen reappear before the committee at another time?

Mr. Stokes: I would think that would be preferable. Mr. Tarnopolsky is here. I have questions, and I am sure Mr. Sweeney does.

The Acting Chairman: I ask the gentlemen, then, to arrange with the clerk for a further appearance before the committee. Would Ron Gostick, Urmas Toming, Clifford Brown and Mrs. MacKenzie, who also did not get before the committee tonight, consult with the clerk so we can reschedule their appearance?

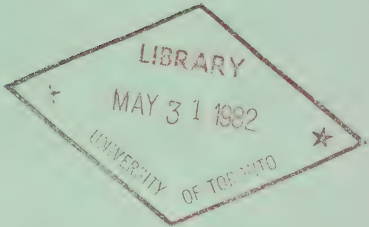
The committee adjourned at 10:31 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT
THE HUMAN RIGHTS CODE
TUESDAY, JUNE 16, 1981

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From the International Coalition to End Domestic Exploitation:

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From Justice for Children:

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McGoff, J., Member, Board of Directors

From the Retail Council of Canada:

Gill, J., Personnel Manager, Central Organization, Eaton's

Hicks, W., Director of Personnel, Canadian Tire Corp.

MacNeill, A., General Manager, Personnel, Simpsons Ltd.

✓ McKichan, A. J., President

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday, June 16, 1981

The committee met at 8:08 p.m. in room No. 228.

THE HUMAN RIGHTS CODE
(continued)

Resuming consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario.

Mr. Chairman: I call the meeting to order. I had indicated that we would discuss tonight, before we got into the hearings, where we go from here as far as the summer schedule goes, or when we hope to finish. I have asked the clerk to set up a tentative schedule for next week, presuming that we are still in session, subject to time changes, obviously, if we are not.

I think in order to provide continuity in the hearings, we have to proceed as best we can.

I indicated that at tonight's meeting we ought to provide a little time to discuss how we wish to proceed. I have talked to all the committee members, to the minister and to the clerk, regarding a time line to report back to the House. I will just review what we have discussed and see if we are agreed on this type of schedule.

One was that if the chairman and the clerk be responsible for scheduling hearings until Thursday, June 25, resuming again on September 8, we would need a resolution that the resources development committee requests permission to meet during the recess of the Legislature.

The suggestion is Tuesday, Wednesday and Thursday, starting the week of September 8, until we are ready to report, or until the Legislature resumes sitting for the purpose of completing public hearings and consideration of Bill 7.

I would further suggest that we ask the clerk of the committee to prepare a budget for the committee for approval on this Thursday, June 18, that we can forward to the Board of Internal Economy.

There are approximately 65 to 70 groups or individuals who have indicated that they would like to present briefs and appear before this committee. If we follow the time line we have been acting under, approximately one half hour for each presentation, we are looking at probably three weeks of hearings in September. That would allow us a couple of weeks of consideration of the bill before the anticipated resumption of the Legislature sitting in the fall.

Both the chairman and the clerk really have some unknowns. If we operate under this time line, it will make it much easier

for the clerk to schedule the hearings and also allow the public to know a little better when they can appear. We are open to any suggestions. If we are in agreement with that type of time line, I suggest we ought to have someone move that.

Mr. Stokes moves that the committee continue with the time line of allowing a half hour for each presentation to the committee so that the hearing of presentations takes three weeks in September and allowing the committee a further two weeks to consider the bill before the resumption of the Legislature.

8:10 p.m.

Mr. Chairman: Is there any further discussion? Are we agreed?

Motion agreed to.

Mr. Chairman: Is that sufficient direction then for the chair and the clerk to proceed with?

Clerk of the Committee: Yes, that is fine.

Mr. Stokes: You did it well, Mr. Chairman.

Mr. Chairman: I ran around a little bit. You have to rely on my inexperience but I understand that select committees seem to have priority over scheduling. I have submitted this time line to our whip's office for consideration anyway. I have submitted this time line to see that we get due consideration for it. The indication I have is that it will be acceptable. Let us hope that is the case. So, at Thursday night's sitting we will ask the clerk to bring us a budget that we can approve and then forward.

The clerk has also circulated a revised agenda. It is revised only in that we have scheduled hearings now on June 18. You will see that these are the witnesses who were not able to get on last Thursday. We have scheduled them now on the eighteenth. The rest of the schedule is the same as previously circulated.

The first group then is the International Coalition To End Domestic Exploitation--INTERCEDE. Frances Gregory, we welcome you here tonight. Do we have the names for Hansard? Frances, could you just introduce your group to us?

Ms. Gregory: Yes. I am Frances Gregory. I am the co-ordinator of Intercede. This is Annette Valdez and Mary Dabreo, who are both members of the steering committee of the coalition.

Could I ask the committee members to introduce themselves as well, please?

Mr. Lane: John Lane, of Algoma-Manitoulin.

Mr. Eaton: Bob Eaton, Middlesex.

Mr. J. M. Johnson: Jack Johnson,
Wellington-Dufferin-Peel.

Mr. Riddell: Jack Riddell, Huron-Middlesex.

Mr. Stokes: Jack Stokes, Lake Nipigon.

Ms. Copps: Sheila Copps, Hamilton Centre.

Mr. Renwick: Jim Renwick, Riverdale.

Mr. Stevenson: Ross Stevenson, Durham-York.

Mr. J. M. Johnson: Mr. Chairman, I wonder if you could possibly quickly supply the committee members with names; it would help people who appear before the committee.

Mr. Chairman: I am Mike Harris from Nipissing.

Ms. Gregory: In the Ontario Human Rights Code of 1970, under section 4(8), domestic workers were excluded from the act's protection against discrimination in employment. This exclusion meant that an act which protects virtually every other worker in Ontario from discrimination on the basis of race, creed, colour, age, sex, marital status, nationality, ancestry or place of origin, did not protect domestic workers, of whom there are an estimated 75,000 in the province.

Classified advertisements, such as the following, were, and remain to this day, perfectly legal: "A better choice of nannies, mother's helpers, nurse companions, housekeepers, Filipinos, Europeans, etc., both locally and overseas."

Another one: "Good choice of local housekeepers, nannies, mother's help, cleaners. Our overseas selection is better than ever--from France, Switzerland, Germany, Britain, Philipinos."

"Excellent applicants from UK, Switzerland, Austria, Holland, Italy, Greece. Select now! Top Filipino housekeepers available immediately."

"Our Tenth Year! Continental, Scottish and British mother's helpers, Philippino housekeepers, local domestics. Call now for August."

It is, we are sure, shocking to you that such blatant invitations to employers to specify their racial or national preferences would not be in violation of the Human Rights Code.

Intercede is pleased to see that section 4 (8) does not appear in Bill 7. However, we would like to point out to the committee a section of Bill 7 that creates a loophole which could nullify the intent of protecting domestic workers against this kind of discrimination.

That is section 21(6)(c), which says, under section 21(6): "The right under section 4 to equal treatment in employment is not infringed where, (c) a person refuses to employ another for reasons of any prohibited ground of discrimination in section 4, where the primary duty of the employment is attending to the medical or personal needs of a person in a private household."

The Minister of Labour (Mr. Elgie) has stated publicly that this section is intended to allow employers of companions to exercise whatever preferences they might have in hiring a person in that capacity. A companion is commonly understood to be a person who provides care to another who is incapacitated due to illness, physical disability, or age.

Intercede is opposed to allowing this kind of discrimination. Furthermore, we are extremely concerned that the effect of this section will be to exempt not only employers of companions from the Human Rights Code, but employers of all domestic workers. The section states that "where the primary duty of employment is attending to the medical or personal needs of a person in a private household," the employer is exempted. Surely the definition of a domestic worker is precisely a person who attends to the "personal needs of a person in a private household."

We are certain that employers and employment agencies alike will attempt to make use of these words "personal needs" to defy the intent of the act. This is not merely an uneducated guess. Yesterday, a member of Intercede phoned several domestic employment agencies, posing as a prospective employer concerned that once Bill 7 is passed, she will not longer be able to choose a domestic worker of her racial preference. In three out of four cases, she was assured by the agency that she would have no such problem.

When employment agencies licensed by the government to operate in this province foresee no difficulty in continuing their discriminatory selection procedures--in spite of a new Human Rights Code which is supposed to protect domestic workers from this kind of racism--Intercede hopes this committee will have the foresight to tighten up the bill so these agencies will not be able to deliver on their promises.

We would also like to comment on a concern that some of you may have--that a private household is a different entity than a factory, or an office, or the civil service, and that employers should have the right to discriminate when the employee will be working in such an intimate setting.

Intercede totally disagrees with this notion of the sanctity of the household and believes that such thinking merely sanctions racism. The household is not beyond the reach of the law if a child is being abused, taxes are not being paid, or census forms are not being filled out. Neither should a household be beyond the reach of the law when a contract of employment is undertaken there.

In conclusion, we urge this committee to ensure that the Minister of Labour's words, on introducing this bill to the House, will be honoured. I quote: "This legislation has truly captured that spirit of fairness and equality which already motivates the vast majority of people in this province."

Intercede urges you to remove section 21(6)(c) from Bill 7. Thank you.

8:20 p.m.

Mr. J. M. Johnson: I have just one question. I will use the example of a person, let us say, from Germany, an older person who needs medical attention. Maybe this individual can only speak German so the ad appears that the workers are from Germany. Would it not be reasonable that that would be the type of person who would best suit the needs of that individual?

Ms. Gregory: My understanding of the Human Rights Code is that it would not prevent a woman who was entirely German speaking from hiring a German-speaking housekeeper or companion. The problem is when a German-speaking person wants to hire a German-speaking person to the exclusion of any other nationality, or a Canadian person takes up the invitation of an employment agency to select one of their top Filipino domestic workers or one of their top Scottish nannies, or whatever. It is not the individuals who have specific circumstances that we are concerned about, it is the intent and direction of the legislation that we are more concerned about.

Mr. J. M. Johnson: But you would accept the fact that in some instances there would be some reason for an individual wanting to have a person of their own nationality look after them in case of sickness?

Ms. Gregory: Yes, but I would want the legislation to be covering the other side, the angle that people do not have a right to discriminate against people they bring into their houses to work as housekeepers or companions.

Mr. Lane: Thank you, Mr. Chairman. I appreciate your concerns. I notice at the bottom of your presentation you say, "We want to remove section 21(6(c)) from the bill." Is there anything else you want put in there or do you want to just take it out of the bill altogether?

Ms. Gregory: Take it out entirely.

Mr. Lane: Nothing to replace it?

Ms. Gregory: Nothing to replace it. What that would mean is that the intent stated at the beginning of the bill--that it is intended to protect domestic workers--would in fact be protecting domestic workers.

Mr. Lane: That is the only part you are concerned about?

Ms. Gregory: That is right.

Ms. Copps: I have two questions following up on the first point. The advertisements you have placed in your presentation here--do you feel they are people who are seeking a domestic worker of their own background or their own nationality or are they making a selection based on racial or ethnic preferences that are not related to their own background?

Ms. Gregory: Definitely the latter.

Ms. Copps: You have underlined personal as opposed to medical needs of a person in a private household. Can you outline some of the problems that you would see specifically with the inclusion of a personal needs clause in that section?

Ms. Gregory: As we understand a domestic worker, and some of us are domestic workers and we work with domestic workers, that is precisely what a domestic worker does--attend to people's personal needs. If someone makes breakfast for you in the morning, that is a fairly personal need they are fulfilling, or if they do laundry or make your bed for you.

What we are concerned about is that that wording is going to be the loophole that everybody waltzes through because that is the definition of a domestic worker right there.

Ms. Copps: When the person from your organization made the call to the agencies you were talking about, were the employment agencies aware of the new act and the loophole that was allowed? Did you talk at all about the loophole?

Ms. Gregory: No, she was acting as a prospective employer. They did not mention the Human Rights Code at all. She was the one who mentioned it and they did not claim either knowledge of it or lack of knowledge of it. The fourth domestic employment agency was hedging. That is why I did not include it as one of the four that said there would be no problem. They said they did not know what was in the Human Rights Code so it is conceivable they would abide by the intent of it.

Mr. Stokes: I would like to ask you, Ms. Gregory, if you have had any experience with domestic employees who are recruited in other lands, particularly in the Caribbean community, and brought here as domestic employees, wholly and solely beholden to whoever hires them, and if they do not watch their step, could be sent back for almost any reason? I know of several cases of that kind of harassment, if you will, or that kind of pressure. I know of one who was sent back because she made the mistake of becoming pregnant.

Is that prevalent in your knowledge of the situation with regard to domestics? You did not mention it in your brief. Would you consider it more of an immigration or human rights problem in Ontario?

Ms. Gregory: To answer the first part of your question, yes, there are about 25,000 women who are in exactly the situation you describe. Those are the women who are in Canada on temporary employment authorizations and who are beholden to their particular employer. The reason we did not raise it in our paper is that we do feel it is an immigration problem which is being dealt with at the federal level right now by organizations such as ours and others.

That definitely is a problem, but I am not sure whether the Human Rights Code fits into alleviating it, when the contract that brings a woman to Canada from the Third World or from Europe is signed by the immigration commission and the employer.

Mr. Chairman: Thank you very much, Ms. Gregory, Ms. Valdez and Ms. Dabreo. I think you have made a very clear pitch to the committee and I think we understand it.

The Retail Council of Canada is next, represented by Mr. McKichan, president. Would you please introduce your group for Hansard? I think the only member at the table to whom you haven't been introduced is Mr. Brandt, parliamentary assistant to the minister.

Mr. McKichan: Thank you, Mr. Chairman. On my left is Ms. Judy Gill, who is personnel manager of the central organization of Eaton's. To my immediate right is Mr. William Hicks, director of personnel at Canadian Tire, and on Mr. Hicks' right is Mr. Allan MacNeill, general manager of personnel of Simpsons Limited and chairman of our employee relations committee.

8:30 p.m.

Perhaps in the interest of time I might compress certain sections of our oral submission so that more time is available for discussion. We appreciate this opportunity to comment on the terms of the amendments to the Human Rights Code embodied in this bill.

The constituency represented by this council embraces, directly, retailers who perform over 65 per cent of store business in Ontario and, indirectly, a further substantial percentage of volume performed by the members of our affiliate specialist or regional retail associations. As you will gather, we are both a direct member organization and a federation. The views expressed have been developed under the direction of our employee relations committee with the authority of the executive committee of our board.

Our members are supportive of the objectives of human rights legislation. Our industry is, as you know, highly people-intensive and is one of the largest employers, by business category, in Ontario. In fact, one person in seven approximately is employed in distribution. Some individual member companies are also among the largest private sector employers in the province.

Many retailers have for many years, and long before the human rights legislation, placed emphasis on ensuring that equal opportunity exists for members of minority groups and for women. It is, in any event, enlightened self-interest for retailers whose image and mode of operation are so well known to the public to be seen to be sensitive and enlightened in this aspect of their behaviour. We are most anxious, therefore, that our comments are in no sense construed to be critical of the main thrust and objectives of the legislation. The recommendations we make are put forth purely with a constructive attitude with the hope and expectation that their adoption will enable the long-term goals of the legislation to be more readily achieved.

In the next section we made the assumption that the legislation was not framed with the intent of discouraging the current practice of most employers of attempting to recruit or promote those candidates for jobs who appear to be best qualified

to perform them. I will skip over the rest of it because I am assured by members of the department that that is the intent of the legislation.

The next substantive point is in the middle of page three, where we deal with the situation of candidates for employment and employees with a criminal record. This is dealt with by sections 4 and 21(6)(b). We make the point that retailing is a business which is unusually affected by employee dishonesty. In contrast to a typical manufacturing or service industry, where only a few employees are in positions of trust in which they have access to cash and/or disposable equipment or inventory, a very high percentage of retail employees have direct access to cash, cash equivalents, readily disposable or useful consumer merchandise or are involved in credit operations.

For most retail companies, losses as a result of internal dishonesty and theft often equal 50 per cent or more of the average net profit of businesses in this sector. That is an unfortunate statistic, but it is a reality. The nature of the business is such that a great many employees must be treated as trustworthy, and those charged with hiring must be enabled to make judgements as to the likely trustworthiness of prospective employees. This situation prompts the following comments in respect to the new legislation.

First, we would hope that the exception to the general rule established in section 4, which is outlined in section 21(6)(b), would permit a retail employer to decline to hire a job applicant who had a record of theft or other related form of dishonesty for a job where likely trustworthiness is a bona fide job qualification. The employee's past history is often the only available indicator of this quality. In this connection, we would suggest that it may be useful to clarify, by means of regulation or otherwise, that a record of offences which reflect directly on an employee's dishonesty is a relevant consideration when selection is being made for filling a position requiring trustworthiness.

We would also hope that the record of offences relating to the driving of a motor vehicle would be treated as a reasonable and bona fide issue to be considered when a decision is being made on the hiring of a candidate for a driver's job or a job involving substantial driving obligations.

Lastly in this section, it seems clear that while section 21(6)(b) constitutes an exclusion from the strict terms of section 4 in the case of perspective employees who have a record of offences which may be incompatible with the proposed duties of the employee, the exclusion does not apply in the case of an employee who may consider himself or herself eligible for transfer or promotion from a nonsensitive job to one in which the individual's prior criminal activities suggest the employee may be unsuited for the new position.

We propose in this light that section 21(6)(b) be amended so that there is inserted after the words "refuses to employ," where they occur in the first line of the subsection, the words "or promote or transfer."

The next section deals with the employment of the handicapped, section 4, section 9(b) and (c), section 16 and section 38(2) and (3). The combination of the effect of these sections implies that an employer may be obliged to hire or promote a handicapped person who is capable of performing the essential duties of employment in a job, but who may not be capable of performing some of the normal job content if that part of the job is deemed to be nonessential. In such situations, the elements of the job which are deemed to be nonessential may still require to be performed by someone else within the work force.

The most likely manner in which these elements of the job will be performed will be by altering the job descriptions of one or more employees so that the work gets done. In many situations this will be an obligation which nonhandicapped employees will be happy to assume in generous and public-spirited style. However, there may well be situations arise where fellow employees express resentment at any extra burden they have to shoulder, and where it is not economical to have the peripheral work performed by employees or an employee specially hired for that purpose.

We believe it would in the long run inhibit the successful integration of the handicapped into the labour force if, in so doing, resentment is caused among fellow employees of the handicapped person or persons. We, therefore, suggest that section 16 be amended by adding the words "or throws additional burdens or responsibilities on the handicapped person's fellow employees to an extent that is deemed unreasonable."

Section 38(3) provides that the board may order a party to alter his premises so as to adapt them to the needs of a handicapped person or persons, provided the alterations would not cause undue hardship, and subject to the regulations. It is our hope that the regulations will provide some explanatory guidelines as to what may be considered reasonable and unreasonable costs in such situations. Retail employers, and presumably they are typical of others, are concerned about the possibility of being required to, say, install elevator facilities in a very small building or in a building with a limited life span or to redesign washrooms in such a building.

We do appreciate it is probably impossible to be too definitive in such situations. However, employers would probably be reassured by some closer delineation of their potential level of responsibility. I understand, in conversation with members of the department, that it was not the intent of this legislation to require major alterations to be made through this means. I think it would be reassuring to employers if there were some such indication in the legislation.

Next, Mr. Chairman, and I believe you have heard about this from others, is the responsibility of employers for acts and omissions of employees. In terms of section 42, an action or omission of an employee of any organization becomes the act of the organization itself without the proviso, which is common in other types of employee protection legislation, that the action be within the scope of the employee's authority.

An employer, therefore, as an example, will become responsible for persistent sexual solicitations by an employee who has supervisory duties which are directed towards another employee. No responsible employer would, of course, condone such action, and all such employers either have now or would be willing to introduce a program whereby the duties of management personnel in this respect were brought to individual managers' attention on a regular basis.

It seems to us that this is not an area where it is appropriate to apply a standard of strict employer liability, when usually the action of the offending employee would be contrary to the intent and instruction of the employer. We, therefore, recommend that a proviso be inserted in section 42, excusing employers who have demonstrated they have been diligent in informing their management of their individual obligations in terms of the legislation and have monitored the application of it within their establishments.

Next is prohibition of methods of selection resulting in disqualification, sections 10 and 21(7). Under section 10, there is a prohibition against a form of selection which would result in the disqualification of a group of persons who "are identified in common by a prohibited ground of discrimination" except where the requirement is a reasonable and bona fide one in the circumstances or is specifically exempted within the act. This provision raises two questions in our minds:

First, most forms of candidate selection for particular jobs attempt to locate, as we have mentioned, not simply adequate candidates for the job, but the best qualified applicants for the job in question. Application of any such tests will ipso facto discriminate against some applicants as a class, such as those who have a personality which is not conducive to easy interpersonal relations for a job requiring such skills, poor mathematical abilities for a job involving the handling of cash, and so on.

We would hope that the legislation is not intended to strike at the conduct of tests for the ascertainment of candidates with the greatest aptitude for particular positions.

Secondly, the provisions may disqualify a group of persons who, because of religious or other reasons, are unable to work regularly on a day when the employer needs their services. In retailing, this typically might be a Friday, a Saturday or a Sunday. In this case, it is our belief that the legislation should provide a specific exemption for this category of need and, specifically, it should be affirmed that such discrimination need not be intended and should not necessarily be construed as discrimination on a religious basis.

Section 21(7) prohibits an employer from refusing employment to an individual as a result of scrutinizing an application for employment which "directly or indirectly classifies or indicates qualifications by a prohibited ground of discrimination" except after a personal interview.

It is almost impossible to conceive of an application for employment which would not permit its reader to infer the sex and possibly the place of origin of an applicant. Any one or more of the prohibited grounds of discrimination might be deduced from the answer given by an applicant in response to a question of a nonsensitive type, such as the nature of educational qualifications, skills and so on. Some such information may also be volunteered by an applicant in a written application without the prompting of a specific question.

In the result, it would be open to virtually every job applicant who had not been granted an interview to claim that he or she had not been accorded an interview because of seeming discrimination. The corollary could well be that employers, to avoid being accused of discrimination, would feel obliged to grant interviews to every applicant for every vacancy, and that, of course, would be a most unfortunate circumstance.

It is not uncommon for hundreds of applications to be received for a single vacancy. A suitable candidate may be located from the first few applicants interviewed. Equally, it is commonplace to be able to ascertain from the written applications that a high percentage of the applicants do not have the technical or educational qualifications to enable them to discharge the duties of the job. It would, we suggest, be a misallocation of scarce and expensive skills if the time of recruiting personnel had to be devoted to self-defensive but patently unproductive interviewing of all applicants, and especially of unqualified applicants. Our economy should not, we suggest, be burdened with that wasteful procedure.

We recommend that an appropriate proviso be added to subsection 22, which would clarify the fact that there is no obligation placed on an employer to interview all applicants for a job and that it is justifiable to eliminate from consideration those who are deemed to be unqualified for reasons other than the listed discriminatory factors.

A word on the family relationships and its relationship to section 4. Section 4 strikes at discrimination as a result of family relationships. Many employers have found that difficulties are caused both in the effectiveness of management and in relations among employees when spouses or close relationships are in a direct or even indirect reporting relationship with each other.

In most organizations, any impediment to the career of an employee affected caused by the establishment of alternative reporting relationships will only be temporary. Most frequently, an alternative opportunity can soon be offered to the employee concerned, and his or her career is not inhibited except in a minor and temporary way.

As the bill is written, it strives for complete equity among a category of employees. That objective is understandable and theoretically desirable. We suggest in this instance that practicality and the rights of a potential complainant's fellow

employees suggest that there be a recognition of the imperatives of organizational harmony and the lessening of the likelihood of allegations of nepotism, whether real or imagined. We propose that there be an exemption for employers whose practice it is to ensure that spouses and close relations are not deployed in positions where familial relationships might be construed as prejudicial to a climate of equity and fairness for all employees.

Whatever decisions are made in relation to the acknowledgements of the logic of recognizing the difficulties which may be posed in the employment of spouses in the same unit, it seems to be desirable to establish a clearer definition of marital status than the one provided by section 9(b).

That definition includes the status of "living with a person of the opposite sex in a conjugal relationship outside of marriage." We question whether the use of the words "conjugal relationship" provides enough certainty to those called upon to construe the legislation. We suggest that if a minimum period of time in which the status had been maintained, say, two years, were added to further define the status of those affected, construction of the provision would be simplified.

Lastly, we have a couple of points on administration, Mr. Chairman, under section 30(3)(c) and (d). Section 30(3)(c) empowers an agent of the human rights commission to remove any writings or papers of employer or other party and to make copies of them. There is an obligation on the person so empowered to "promptly return" the material removed.

The experience of our members is that "promptly" in this context has been loosely construed, and the lack of records can have a disruptive effect on the conduct of business. It is our proposal that for the words "promptly return" there be substituted the words "within four business days." Alternatively, most employers would be willing to bear the expense of providing the inspector with copies of the documents produced as so desired under the inspector's supervision.

Section 30(3)(d) permits inspectors of the commission to question employees in relation to complaints under the act and, at the discretion of the inspector, exclude all other persons from the interview. The provision is understandable. The commission will wish to be assured that an employee making a complaint or witnesses to an incident which prompted a complaint feel under no duress.

However, our members are aware of situations where employees, unsure of the nature of the proceedings and perhaps fearful of any solitary interaction with a representative of government--and we are thinking here of employees who possibly have come from a country where a representative of government is a less benign influence than that which prevails in our province--have requested the presence of a fellow employee or a representative of management or some other third party at such interviews. It seems to us that, provided the request is made by the free will of the employee, it should be respected, whether the accompanying person sought by the employee is a member of management or not.

We are not suggesting by any means that it need be a member of management. We suggest that additional words be added to the section which might read: "Unless a person being questioned requests that there be present some other person as a witness to the interview, in which case the wishes of the person interviewed will be respected whether or not the third party is an employee or member of management of the employer."

All of which, Mr. Chairman, is respectfully submitted.

Mr. Chairman: Thank you very much, Mr. McKichan. Am I pronouncing that properly?

Mr. McKichan: Yes, indeed.

8:50 p.m.

Mr. Chairman: Does anyone have questions of Mr. McKichan or any of the other members of the Retail Council of Canada?

Ms. Copps: I have just a couple of questions. On page 11 you talked about the powers of seizure that have been granted the human rights commission. I am surprised that the position you take seems to be a fairly moderate one and that you do not object to what some people in the press have been calling "search and seizure" provisions applied to the human rights commission. Do you then not object to the power that would be given to the commission to take documents away or copies of documents without a search warrant?

Mr. McKichan: Our members, I guess, were influenced by their experience, Mr. Chairman. It seemed to them that these powers had not been exercised with any undue vigour or malice. I think in a case of personnel records they can understand that they may need to be studied. It has not been a sensitive issue. That is really how I would respond to the question.

Ms. Copps: Likewise, you make no negative or positive comments about the powers spoken about in the new act which would empower the commission to levy fines of up to \$15,000 against individuals and potentially up to \$25,000 if an appeal decision is not upheld. Do you have any feelings on those powers?

Mr. McKichan: I guess most legislation these days embodies fairly fierce horrors of punishment and retribution. Again, our experience has been that they are not usually exercised with the full severity of the provision. We would assume, as in the past, the courts would exercise judgement and make the punishment suitable to the crime.

Ms. Copps: I have just one last question. On page three you object to a provision which you say would actually give disabled candidates greater preference in the hiring procedure than candidates who are not physically disabled.

Mr. McKichan: Perhaps I should inject there, Mr. Chairman, that was not our contention. We said we hoped the legislation would not be construed in that way. We do not necessarily say that it shows that intent. We just wanted to clarify that we intended to advise our members that it was not intended to be construed that way and we were seeking the confirmation of the members of this committee.

Ms. Copps: So you would then support the position of the spokesmen from the disabled community who would state that what they are asking for is an equal chance, provided they can carry out the essential functions of the job. And you would be prepared to go along with the definition as outlined in the proposed Bill 7.

Mr. McKichan: Yes, indeed. We were simply clarifying our intended procedure to so advise our members. Most of them behave in that way in any event.

Ms. Copps: The only reason I bring that up is that you made some reference to the moral compulsion that employers should have, to not be required to hire candidates who are less qualified for a job. I just thought that connotated perhaps a position that was slightly different from that spoken by the disabled community.

Mr. McKichan: I do not think there is a difference there, and I believe most spokesmen for the disabled take the point of view that they want equal treatment, not necessarily more than equal treatment.

Mr. Eaton: On the very last page with regard to someone being questioned having someone present with them, you refer to "even a member of management." I would be a little concerned that in the event the complaint is against management, management could be saying to someone who was going to be a witness, "Look, I want you to make sure I am present at that. You make sure I am invited to be present with you."

Mr. McKichan: Mr. Chairman, we were somewhat diffident about including any reference to management in that section, but it was pointed out by one of our members who had experienced an actual case that an employee had very definitely asked for a particular member of management, who was not the individual involved in any way in the supervisory capacity of that individual, nor had he any direct relationship with the incident. He was simply a person in whom the employee had some personal confidence and trust, and that was why they wanted to have that person present.

Mr. Eaton: I can see your point because I think it has come up before. I know some of us have wrestled with it in our discussions among ourselves, about a person being alone, being a little nervous about it and wanting to have a friend with him. How do you cover it without leaving it open for someone to coerce a person into making sure they are there to hear the other side of it?

Mr. McKichan: I think we would have no difficulty with some words which specifically excluded a member from management who had been involved in the actual incident or who had direct responsibility for the case. That would not give us any trouble at all. We are more concerned with the principle of the ability to have a third person there. We are not particularly anxious to have a member of management there.

Mr. Eaton: Of course, some choice is left to the investigating officer.

Mr. McKichan: Yes. We think it also desirable if the employee has strong feelings, himself or herself, that these feeling at least be regarded.

Mr. R. F. Johnston: Mr. McKichan, obviously the group has spent a lot of time going over the bill, and I compliment you on the detail. There are a number of items, though, that I would like to raise, some of which have been touched on. I would just like to get further clarification.

I understand the concern you are raising about people with records, in terms of theft, et cetera, especially given the problems with white-collar crime and all that. But I do have a fair amount of trouble understanding what kind of role management would play in deciding when somebody's debt to society has been paid, and when they are then suitable for employment in a position of some kind of trust. I wonder if you could speak a little bit about that.

Mr. McKichan: I guess the general practice of employers--I do not think I would single out retail employers--is when people have been, at some point in their career, found guilty of some offence which reflects on their trustworthiness, it is not often they are immediately replaced in the same type of position. But they may be hired for some other job, where that particular characteristic is not required, and having proved themselves in that job, they eventually again can be considered for a position of trust.

I think in a very sensitive job it is difficult to ask an employer to immediately replace someone in a similar type of job with a similar type of exposure. It may not be completely fair to the individual either. It is a matter where judgement has obviously to be exercised.

I guess experience also shows that in many cases where an individual has been involved with a breach of trust, there is quite a high probability of that recurring. It seems to me society has a difficult job of balancing the rights of the individual and the obligation to fellow employees and to those who are likely to suffer. It is not an easy challenge, I suggest.

9 p.m.

Mr. Eakins: Mr. Johnston has raised a question which I was going to ask. You speak on page three of the possibilities of

internal dishonesty and what it could mean to the net profit of businesses. Have you any research to determine this problem in regard to those who have perhaps been convicted? Does this 50 per cent represent people who have had no conviction, or does it indicate people who have had a conviction? I am looking for a background, as Mr. Johnston has pointed out.

Mr. McKichan: Usually it is people who have no previous records.

Mr. Eakins: So, really, you have no statistics to show that the people who have served their sentence and are employed have been dishonest in retail businesses.

Mr. McKichan: I turn to my colleagues for comment on that, Mr. Chairman.

Mr. Eakins: It a sort of presumption that they might be, rather than actual fact. Is that not true?

Mr. MacNeill: There is certainly no research that we have as a company.

Mr. Eakins: That answers my question.

Mr. R. F. Johnston: I am concerned whether there is any real need to add further regulations for clarification in that area. I wonder if we are not presuming something which we do not know and reacting to things for which we do not have any basis, and that we are working under some kind of a bias, which is unfortunate.

Turning to the matter of the handicapped for a minute, I think I understand the concern, and I am glad Ms. Copps raised the question she did with you, because it seems strange to me that you would raise the notion that somehow the bill gives any idea of special privilege to handicapped people in terms of competing for a job. A person would have to compete on the same ground as anybody else.

I am a little concerned about this idea that you would add to section 16, "or throws additional burdens or responsibilities on the handicapped person's fellow employees to an extent that is deemed unreasonable." Doesn't that just open it all up the other way again and place the onus very heavily on the handicapped person to show that he or she is not unnecessarily disrupting the nature of the business? Don't you worry about that a little bit?

Mr. McKichan: I guess it is a delicate situation. Obviously, one does not want to do anything that seems to discourage the employment of the handicapped. On the other hand, our concern was that we also do not want to engender an atmosphere where people are nervous about working in a section where some handicapped people are employed.

I guess we were attempting to achieve that difficult balance. We thought that some such words might be reassuring to

prospective fellow employees of a handicapped person. We do not have very strong views on it at all. It was just an attempt to take a somewhat therapeutic approach towards that particular section.

Mr. R. F. Johnston: Is there any experience you are working from on this basis which would indicate that there is that need to abate the fears of workers in a work place where handicapped persons are going to be employed?

Mr. McKichan: No.

Mr. Hicks: In my opinion, it boils down to the essential duties of the job. The state of the art in job description in industry is not that sophisticated or perfect yet on what become the essential duties of the job versus the nonessential duties of the job. It is in that context, as we get more structured in such things as job descriptions and so on, that there will be more of that type of thing involved, such as, "All right, I am doing my job, but I have to pick up these extra duties of this persons's job as they become more defined." It was in our interest not to have that kind of thing occur.

As retail employers represented here, we certainly take great pride that we are able to provide jobs for handicapped people to make a meaningful contribution, and all of us represented here have done that. Our main concern is with essential duties of the job and how that might be construed as it evolves through this whole business of managing job descriptions and so on.

Mr. R. F. Johnston: It has always struck me about job descriptions, and I have drawn up a few in my time as well, that it is not difficult at all to draw up a job description which fits an individual as tailormade and which is able to be used as an ideal grounds of discrimination in very precise terms. At least, that has been my experience in terms of federal civil service job descriptions, which have been developed to red-circle people and that kind of thing.

I will move on to the notion that responsibility should not move from the employee to the employer in terms of things like sexual harassment. It interests me that you would suggest that. If some kind of criminal action were perpetrated on a job, would it not often be the case that there would be some kind of responsibility laid, not on an individual within a corporation, but on the corporations themselves? If somebody falls in a scuffle or something like that on the premises, is there not responsibility, generally speaking, to the corporation or the union or whomever as well as to the individual who is involved as an employee in that situation?

Mr. McKichan: If you are drawing a parallel, Mr. Johnston, between a civil obligation or some dereliction of a civil duty, such as the duty to preserve a safe work place and the responsibility for a criminal act, I would suggest that the two

are very much not comparable. The civil obligation is one which I think the employer knows he has to assume. The criminal obligation is one which he can do his best to prevent, but with the best will in the world he cannot guarantee it.

This industry has some bad experience of strict liability legislation in relation to the federal provisions dealing with the incorrect pricing of product. In reality, one knows that the prices in the store are going to be applied by some hundreds of people if it is a big enough store, or tens of people in a smaller store, who are going to do their best and are going to work according to management direction, but they are going to make mistakes.

At the moment, under the federal advertising provisions we have a strict liability provision. I believe you could go into any store anywhere and sooner or later you would find an article that was wrongly priced. At the moment, theoretically, the employer is strictly liable for that mistake.

It is that kind of sensitivity we are smarting from, that strict liability legislation for criminal acts where the employer has exercised with all due diligence the obligations of an employer. We feel that is an inappropriate type of provision.

Mr. R. F. Johnston: Others may wish to follow that up. I will skip over some of the other items I was going to raise because I do not want to take too much of the time. But I will come back to the point that has been raised by another member, the matter of the private interviews and adding the section that you suggested here, "unless a person requests," et cetera.

Do you not feel that the phrase "in the discretion of the inspector" covers that need to be sensitive to somebody who wants to have somebody else along? If, as is most likely, it is a complaint against an employer, a supervisor or whatever, the complainant is feeling a little intimidated by being interviewed by one of those stern government officials. If he or she were to express that and to wish to bring along another employee, do you not feel that that phrase handles the situation as much as adding this other item? I would worry that it would be used badly.

I have real concern with respect to whether or not the third party is an employee or member of management or the employer. I see that opening it up to all sorts of employer intimidation. Why do you not suggest "I will come along with you," that kind of thing? I think that leaving it to the discretion of the worker and the commission makes an awful lot more sense.

9:10 p.m.

Mr. McKichan: I think we would be happier if there was an explicit permission for some form of third-party representation. We were sensitive, as you are, to the inclusion of a representative of management. It was simply because there can be cases where the employee may genuinely want that.

There may be other cases where the employee feels that, because of language problems or other reasons, his or her fellow employees would be less helpful than somebody who is more used to that kind of formal situation. I think it would go most of the way to meet our point if there was an explicit provision that a third party of the employee's choice could be present.

Mr. J. M. Johnson: I will try to be brief, Mr. Chairman. Mr. McKichan, I would like to ask a question. You stated in your first page that your council is responsible for 65 per cent of the retail businesses in Ontario.

Mr. McKichan: Our members are.

Mr. J. M. Johnson: I would think with that much responsibility it should be incumbent upon your association to set an example to the rest of the industry.

Mr. McKichan: I hope we are not being boastful, but I believe our members do that.

Mr. J. M. Johnson: I agree with some of the proposals that you made, certainly in relation to making a thief treasurer of your company or something like that. I can understand that creates a problem.

However, on page five, on employment of the handicapped, I cannot accept that that "implies that an employer may be obliged to hire or promote a handicapped person who is capable of performing the essential duties of employment in a job, but who may not be capable of performing some of the normal job content if that part of the job is deemed to be nonessential. I would think, with the size of your operations, surely you can fit handicapped people into your system. Even if they cannot do every single facet of a job, they could still work in your operations.

Mr. McKichan: We are not quarrelling at all with that intent.

Mr. J. M. Johnson: You are saying that nonessential jobs will have to be performed by someone else, which creates an undue burden on these people.

Mr. McKichan: With respect, we are not complaining about that. We are saying that in most cases that will be entirely acceptable to the other employees, and I would hope would be welcomed by them as part of their civic duty and part of their duty as a fellow employee.

We are simply saying that we could conceive of a case where, because of the nature of an individual's handicap, the parts of his job which he is not able to perform may have to be performed by one or more other employees, and that these employees who are asked to assume their function may think it is somewhat unfair on them.

We are not being judgemental about that, but we are saying if that occurs, if the residue of the job does seem to throw an unreasonable responsibility on the other employees, that that fact be taken into consideration. We regard that as very much an exceptional circumstance. I would assume that in 999 out of 1,000 or an even higher percentage of cases, that question would not arise.

Mr. J. M. Johnson: That being the case, I am not sure we needed that much space devoted to that topic. Let's forget that.

May I ask a question of the representatives of Eaton's and Simpsons? Eaton's and Simpsons do sell insurance, both life and accident?

Ms. Gill: That is right.

Mr. J. M. Johnson: We had a presentation the other night by a group of people. I am quoting from the Toronto Star of May 29, 1981, with reference to spokesmen for Metropolitan Life, Montreal Life, Standard Life, Travellers, et cetera. "An underwriter with Great-West Life said his firm offers the benefits to blind persons, but only with extra premiums...one and a half to two times as much. I think you'd find that this is standard."

The article says: "Most underwriters or managers contacted said they could not quote statistics proving the blind are involved in more accidents than sighted people."

Would you care to tell me what your policy is in Eaton's and Simpsons?

Ms. Gill: I do not know our policy. Our insurance company is a separate entity and I am not involved in it. I do not know what the policy is in terms of insurance.

Mr. McKichan: We would be happy to ascertain that, Mr. Chairman.

Mr. J. M. Johnson: I would appreciate that.

Mr. MacNeill: Simpsons does not sell insurance. It is Simpsons-Sears. We are divorced.

Mr. McKichan: There is not a representative of Sears here, Mr. Chairman.

Mr. J. M. Johnson: Maybe I should address it to the Bay.

Mr. Chairman: I know this came up before. One of the groups to appear before us, probably some time in September, is Canadian Life and Health Insurance Association. I think by that time they will have heard our concerns and I hope will be prepared to address them.

Mr. Stokes: Mr. McKichan, you make a plea for some amendment in the sections dealing with the employment of the handicapped, and you make the recommendation concerning the extra burden that might be placed on other employees as a result of the inability of certain handicapped people to carry their load, which may place undue burdens on other employees. You suggest that section 16 be amended by adding the words "or throw additional burdens or responsibilities on the handicapped person's fellow employees to an extent that is deemed unreasonable."

Then, in the next paragraph and under section 38(3), you say, "It is our hope that the regulations will provide some explanatory guidelines as to what may be considered reasonable and unreasonable costs in such situations." You are introducing new verbiage, either into the legislation or the regulation, and then ask us to explain it. Could you be a little more helpful in that?

Mr. McKichan: Perhaps, Mr. Stokes, it would clarify the situation if I suggested that these two are quite separate thoughts. The "reasonable or unreasonable," to which we refer in relation to the possible alterations to a building, do not--

Mr. Stokes: You mean "reasonable and unreasonable" may have different connotations depending on the purposes you wish it to serve?

Mr. McKichan: Not at all. In the case of alterations to a building we use some examples. We would assume that it would not be the intent of the authors of this legislation, as we say, to install an expensive elevator in a very small building which might be more than the worth of the building. We assume that that was not the intention.

Mr. Stokes: You would not want those who would draft the regulations to be more specific than what you suggest with regard to "or throws additional burdens or responsibilities on the handicapped person's fellow employees to an extent that is deemed unreasonable." Who is going to make that decision?

Mr. McKichan: I assume it would have to be construed by the commission when it was considering a case.

Mr. Stokes: You would like to leave that hang there as is, but you would like it to be more explicit with regard to what is reasonable or unreasonable with regard to changing the plant or the physical characteristics of the work place.

Mr. McKichan: Not necessarily. We would be equally happy to see a test of the additional burden, if that was necessary, spelled out with exactitude.

Mr. Stokes: But you would not wish to do that here?

Mr. McKichan: Is your question whether we would wish to do it? If, for instance, an employee's job content or job obligation had to be increased by 50 per cent, it seems to me that would be unreasonable. I am sure you would agree with me on that.

Mr. Stokes: What about 25 per cent?

Mr. McKichan: That would be an interesting percentage, I would suggest.

9:20 p.m.

Mr. Stevenson: I wish to make two comments. The first is with regard to section 22 and the possibility of having to interview all applicants. In reading the bill myself, I had not noticed that. As far as I can recall, you are the first group that has raised any concern about that section. I would like to ask you, or the ministry people, if this is something new in Bill 7 as opposed to what is in existing legislation?

Mr. Brandt: I can answer, I believe, from the ministry standpoint. I do not believe the interpretation of that section is meant to imply that an employer would have to accept every applicant for interview purposes ad infinitum. That is your concern, I believe?.

Mr. McKichan: Yes, sir.

Mr. Stevenson: In reading it, one could interpret that one might have to interview every applicant. Quite clearly, that could be a major problem in some situations.

The other matter goes back to this business of entering a business to get documents without warrants. We have had a number of business groups in here expressing quite sincere concern about that particular area, and there are, I believe, a few on the committee who are concerned about that area as well.

You have not come out against that. I believe you stated your experience was that it had not been a problem. Some of the groups that have been in here previously were small business. Do you feel that because of your size you have received any preferential treatment in the past, that it has not been a problem for you, but it might have been for others? How would you explain the difference that some business groups appear to have in that area?

Mr. McKichan: First, I should explain that we have members of all sizes, from those who do a few hundred thousand dollars up to those who do many millions of dollars. I must say I have not heard from any of our small members that this has been a particular problem with them. That may be because they were fortunate in never having had this experience.

I could conceive that what might be a relatively light burden for a large organization could be a significantly greater burden for a small organization. That may well be the case.

Mr. Renwick: Mr. Chairman, I just have two short comments. Would you mind referring to your brief at the top of page three, where you deal with this question of the employment of handicapped people? We have had it before and I am sure we will have it again as we consider the implications of this bill.

My problem with that is that what you are really saying is you should not feel under a moral compulsion to give preference to a candidate who happens to be handicapped if there are other candidates who, because they are not handicapped, are better qualified to do the job.

Mr. McKichan: Mr. Renwick, that was the implication which you drew from these words. I regret it because it certainly was not our intention. We certainly did not mean when we were talking about qualifications to refer in any sense to the fact that one candidate was handicapped and the other was not.

We were thinking about the questions of skill or aptitude or other things completely unrelated to the handicapped. Generally speaking, as you know, Mr. Renwick, employers seek to find the best qualified individual they can in a particular skill, where skill is an important aspect of the job.

We are simply saying we assume that criterion is not affected by the legislation. If two candidates have equal abilities, then of course they should get equal treatment. We would certainly be zealous in bringing that fact to the attention of our members.

Mr. Renwick: My second question relates to the criminal record question. At the top of page 4, the first item, you refer to a record of dishonesty or theft with respect to funds in a position requiring, presumably, financial trustworthiness, and so on.

Did you consider, in making that comment, that the actual definition of a record of an offence in that connection means an offence in respect of which a pardon had been granted? In other words, not only are you talking about a person who has been convicted and served whatever sentence was meted out by the court and, therefore, in the traditional euphemistic language has paid his debt to society, but you are also talking about people who have waited five years, have then made an application for a pardon and have gone through the whole of the process that involves, which is a very lengthy process and a very detailed one, to re-establish their position as being pardoned. Would you still say you should impose this kind of limitation on such a person?

Mr. McKichan: Where we are using the question of record, we were not using it in a legalistic sense, Mr. Renwick. What we have in mind, for instance, is that an employee may be discharged for breach of a company regulation, which may have or may not have involved a question of dishonesty. In this context, it probably did involve a question of dishonesty. Obviously, that employer would be disinclined to rehire that employee for the same type of job when he had recently discharged him for that very reason.

Mr. Renwick: I am not sure I understood you. Do you mean I have misread this? I thought you were referring to section 4 and the one section which contains the additional prohibited ground of

a record of offences as being a basis on which you would want to have some exception, that you could on a bona fide and reasonable ground exclude that person from consideration for a job which had an element of financial trustworthiness about it.

Mr. McKichan: Yes. I am simply saying, Mr. Chairman, that we were thinking of a record of offences not simply in the legal sense, but also the employee's record with that employer.

Mr. Renwick: I do not think I can pursue that because obviously we are talking along two different lines. On another occasion we can probably pursue that. I did want to point out to you that the actual definition of record of offences, which is a prohibited ground, is to discriminate against a person who has committed an offence but who has obtained a pardon.

That takes one long period of time and is not an easy process in Canada. It is five years after the conviction has been registered. Indeed, I think it is five years after you have completed your sentence, if you have been sentenced. You must then wait five years. You then make the application to the Solicitor General of Canada. It is then investigated by the Royal Canadian Mounted Police, not by any local police force, and you have to provide persons who will vouch for your rehabilitation and your societal reformation and redemption.

I personally think it is a very restrictive clause even in the way it is drafted. To think that a person who had gone to that amount of trouble to re-establish himself by getting a pardon should then be discriminated against, I think would be unwise. Would you agree with that?

9:30 p.m.

Mr. McKichan: I must say we were not considering the case of a person who had achieved a pardon. We were thinking of the more common case where often it is a recent case.

Mr. Renwick: The driving record one is an odd one. I think of my colleague the member for Scarborough West (Mr. R.F. Johnston) whom I have great difficulty driving with, let alone hiring him to drive me. Most of the other provincial statutes do not pose a problem, but perhaps in the case of an accumulated record, which would indicate that the person is a poor driver, my own view is that reasonable and bona fide exception probably picks that up.

Mr. McKichan: We would hope so.

Mr. Renwick: I do not think that is a problem.

Mr. McKichan: We express that as a hope that the legislation would be so construed.

We do draw the attention of the committee to the question of transfer and promotion where virtually the same considerations apply, in our view, to those which would affect the hiring of an individual in the first place. A person may be hired in a

nonsensitive job and he may wish to be considered for application for transfer to a sensitive job. It seems to us the same considerations which are provided for in section 21(6)(b) would also have relevance there.

Mr. Renwick: Thank you, Mr. Chairman

Mr. Chairman: Thank you very much, Mr. McKichan, Mr. MacNeill, Ms. Gill and Mr. Hicks. Several of the members have indicated that you presented to us a very well thought out and excellent brief. I am sure your concern and your proposals will assist this committee in its deliberations. We thank you for being here tonight.

Mr. McKichan: Thank you, Mr. Chairman. We appreciate your careful hearing.

Mr. Chairman: Mr. Michael Bay representing Justice for Children.

Mr. Anand: Mr. Chairman, my name is Raj Anand. I am a lawyer and on the board of Justice for Children. I will be chairing this group of four, our contingent from Justice for Children. On my left is June Callwood, who is a writer, a member of the board of Justice for Children and a former president of the organization. On my right is John McGoff, who is a child advocate and also a member of the board of Justice for Children. On my extreme left is Michael Bay, who is a staff person with the human rights committee of Justice for Children. June Callwood will begin.

Ms. Callwood: I would like to explain briefly for those of you who are not familiar with the organization that it is about four years old and in that time has accomplished a considerable amount for a young organization. Our library was supplied by the law society. It is an important reference library for children's law. We put together a native court workers' training program, which has been emulated across the province. Last year we had what they call a TCLAS--Toronto Community Legal Assistance Services. Lawyers will know what is. The University of Toronto placed what is really a legal aid clinic for young people in our office. Last January we ran a three-day training program for lawyers in co-operation with the University of Toronto Law School.

The board of directors consists of a broad range of people, though I feel a little top heavy with lawyers. That is understandable, given the nature of our organization. We have professors of law, lawyers in distinguished firms and lawyers doing what amounts to street law, Dr. Diane Sacks, who is recognized as a paediatrician dealing with adolescents, Dr. Woodhill, a psychiatrist at Clarke Institute and people of substance. I say that because we are on a frontier. As a grassroots community organization should be, we speak for change which society is contemplating but perhaps is not as ready to accept. I think that is our proper role. I think you perform your proper role by listening to us. I think this is the guts of democracy.

We come to you with four recommendations. We are going to talk about children, of course. There are seven million children in this country, but until they become of age, which varies from province to province and in various jurisdictions, they are really children of a province until they are adults because almost all the jurisdiction which controls the lives of children has to do with provincial law. Consequently, the deliberations of this group can have an enormous bearing on the lives of Ontario children.

We would like to explain that although we sound like advocates of children against society, and perhaps even against their families, that it is the furthest from our intention. We are founded on the principle that the best place for a child to be is in a family, that the last resort for any child is to remove the child from the family. None of what we are proposing to you is intended to be taken as a way of dividing the child from the family. When the family is ideal, this is the best place for a human being to be. When it is not ideal, we assume society can help it rather than remove the child.

The thrust of this particular government in recent years has been in the direction of recognizing more and more the integrity and individuality of the child. This province now recognizes that a child has a right to a lawyer. In the recent amendments to the Education Act, there was recognition again that children differ very much and that there is a role for advocacy. Some of our recommendations go to that point and, perhaps you might find, somewhat ahead of it.

The first one has to do with the wording, the definition of "person". This is almost a cosmetic change. Given how one always assesses what luck we are going to have in being able to be convincing, we think this is our easiest one to accept. The Ontario Human Rights Commission has recognized that a child has a right to lay a complaint, but the wording of the law, as such, does not back up that interpretation. We are asking that it be amended to add the words, "and a human being of any age," as the definition of person. If that is so, a child can lay a complaint, which, as I said, already happens.

We are asking something that seems quite dramatic, that the definition of what age be removed entirely from the Ontario Human Rights Code. The over-65s are not in our jurisdiction, but it was necessary to be consistent, and we have included them. Our feeling is that it is inconsistent with the aims of a human rights code to establish that certain rights pertain to this age group. By its very nature, that suggests all other ages can be discriminated against without any penalty, any moral penalty, any suasion or any legal penalty; that it is all right to discriminate.

Without interfering with the benefits which accrue to children, we suggest that the protections--since John Kelso in 1890 in this province--have taken a very long time to protect children; and that, without having those tampered with, since they are benefits, the restriction of rights to a certain age group works a tremendous amount of injustice.

I am reminded of the 50-some years ago when, in 1929, women were declared persons. The sky did not fall down. The consequences to the sense of dignity and worth of women has taken a very long time, but it is an attitudinal change to which the law gave some recognition and advanced that way.

9:40 p.m.

Let me give you some of the inconsistencies, very briefly, which result from what is the inability now of the law to decide when a child is capable, when a person crosses some invisible barrier which we invent for them.

You can drive a car when you are 16 and a commercial vehicle when you are 18. You can drink when you are 19. You can attend a restricted movie at 18. You can work for a collection agency at 18. You can operate a hoist on a construction site at 19. You can join the army at 18. You can be a professional boxer at 20, a chiropractor at 21, a lifeguard at 17, a boiler inspector at 25, and so on.

You can get a hunting licence at 15, be buried in an adult-sized grave at 16, join a horticultural society at 16 and be an X-ray worker at 18. To be a Children's Aid Society director, you have to be 30 or otherwise demonstrate unusual maturity. That is in the law. My point is that anyone who demonstrates unusual maturity ought to be qualified on the same basis as anyone else, that age should not be a factor. That is our second recommendation.

The third one has to do with what has been called the 730 days of limbo, the period of 16 and 17, for which, by oversight, there has been a gap created when we determined in Ontario that a 16-year-old can live apart from parents, but we did not determine that a person was an adult until 18.

We have others that are going to speak more directly to this, but it is a very poignant time. I also chair a committee on teen-aged mothers, and in our experience there are teenagers of 14 and 15 who want desperately to get away from abusive homes. When they do, they find they cannot get jobs, they cannot get welfare, they cannot go to school and there is nothing for them. If they become pregnant, suddenly there is something for them. There is a disincentive not to have an infant at 14. In this city alone, 300 young people under the age of 16 had babies last year. There are double tragedies in all of that.

We would ask, as a minimum, changing the definition of the period when people are protected by the Ontario Human Rights Code. At least amend it to 16 to 65 in order to cover this gap. This is not a small matter. The last speaker you will hear from is a person caught in this gap, and he wants to tell you what that is like. He came to Justice for Children, and we thought you should hear from him directly on this one.

My final recommendation has to do with adults-only buildings. The legislation, as written, would seem to protect families so that they are able to be in multiple-dwelling units.

In fact, it does not. Apartments and condominiums can be defined as being excluded. We know that was the intent of the legislation, but it is not worded in a way that is effective. We would ask that that be amended so that it is worded to conform with the intent of the government.

We would point out that it is not a matter of playing off the rights of people who would rather not be in a building with children against the needs of families, particularly for low-cost housing, because there is nothing to prevent a high-rise landlord from restricting the upper floors of the building to adults only--this is commonly done in other jurisdictions--while the families have the lower floors. We are not asking people to live next door to them, if they find children odious, and some people do. At this time it is a serious hardship for people with families, particularly for single parents with small children. The housing problem is acute, and the legislation is being used against those young families.

John McGoff, who deals with adolescents in trouble, would like to speak to you for a moment.

Mr. McGoff: Mr. Chairman, members of the committee, ladies and gentlemen, as a very brief preface to my remarks, I would like to start by saying how grateful I am to live in a province and to live in a country that affords us the protections we have as adults. A cursory glance at any newspaper reaffirms in my mind how fortunate we are in this province and in this country, when human rights issues, life and death issues, continue to burn throughout the world.

The organization which we represent, Justice for Children, comes to you this evening asking you to extend that protection to young people between the ages of 16 and 18. We are fearful that they may not be excluded from possible discrimination under the proposed code. It must be recognized that a large and growing number of young people are, for whatever reason, living independently, that is, living on their own. They are what I refer to as the in-betweeners, the vulnerable people--adults by some standards, yet not adults by others. They suffer the highest rate of unemployment.

I am working every day with young people who are in trouble with the law, soon approaching their sixteenth birthday. I would suggest to you they are facing enough disadvantages in their struggle for independence, in their struggle for a responsible lifestyle, without having to face the possible hardships of inequalities or injustice or discrimination. Therefore, I am here to say, please extend to them the recognition which is ours, and tell them by your actions that they are important, that they are valuable, that they are cherished, and afford them the same rights that you have afforded us. Thank you.

Mr. Anand: Mr. Chairman, members of the committee, it is our intention that our presentation will raise essentially two different issues. The first is the one that has been addressed by the two individuals that you have heard, and that is simply, are there problems with the amendments as drafted to the Human Rights Code which have to be addressed? We have, I think, pointed out three such problems.

The second question, and it is one that is only reached after the first had been answered, is can appropriate language be drafted to rectify those problems, to capture these concerns in an appropriate way? I put the questions to you in this way not because there is anything novel about it, but simply because in the discussions which our group has had with members of the Legislature and others in relation to the recommendations which we are making today, I think there is a degree of consensus that it is wrong, in principle, to add the Ontario Human Rights Code to the list of tools of discrimination against children.

It is wrong to permit persons under 18, especially those who are near 18, to be excluded from the fundamental rights on this basis alone, the basis of age. The question we inevitably get is, what can be done to correct this situation without adding further difficulties?

I ask you to separate these two questions and to answer the first one affirmatively, with respect to the three concerns that we have addressed. I hope to deal with the second to suggest to you language which can be used to correct what, in some cases, I think are simply oversights with respect to the Human Rights Code amendments.

Let me dispose of the first recommendation rather quickly. This recommendation, I think, addresses a point which I would classify as an oversight. In my view, it was clearly intended that children have the right to lay complaints, like anyone else, where they allege discrimination on the grounds of race, sex, colour, national origin, handicap or any of these various grounds.

In fact, some of the most celebrated cases before the human rights commission and before the courts of this province have involved individuals who are perhaps excluded under the definition of person in the code amendments. I speak, for example, of the Cummings and Baszo decisions involving girls in boys-only sports leagues. Those were cases which, arguably, should not have been taken by the commission. I think that, at the very minimum, as June Callwood said, it is something which has to be corrected.

9:50 p.m.

It is a situation which was recognized by the commission itself in its report, Life Together, in 1977. They said: "The commission has, in the past, adopted a policy of accepting complaints of discrimination both from, and on behalf of, individuals who are less than 18 years of age. Cases in which children or young adults in this age group have suffered discrimination because of their race, creed, colour, sex, marital status, nationality, ancestry and place of origin arise frequently."

"While the commission's policy has operated reasonably well so far, there is no specific authorizations for it in the code as it now stands. The commission, therefore, recommends that the definition of the term 'person' as used in the code be broadened

so that, pursuant to subsections 15(1) and 15(2)"--this is in the existing code, which deals with the laying of complaints--"it encompasses any individual regardless of age. Support for this recommendation comes both from a number of briefs received by the commission and from its own experience."

Similar concerns have been addressed by the Saskatchewan Law Reform Commission in a report which it called, Tentative Proposals Relating to the Civil Rights of Children. I will not quote in detail from them. The simple point is that, surprisingly, it is not clear under the present definition of person in section 43(c) of the proposed code of Bill 7 whether "person" includes an individual under 18 years of age.

"Person" has been interpreted differently by different courts under different statutes, and individuals under 18 have been included in some cases and have not in others. In my view, this is something which should simply be clarified once and for all. Our solution here is simply to add to the definition of "person" in subsection 43(c) "and a human being of any age." That does not address the merits of the concerns which we have with the code, but simply brings the present situation into line with the reality.

On the question of adults-only housing, we consider here subsection 19(4) of Bill 7. It is important to realize that 19(4) represents a very large exception to the general provision, subsection 2(1,) which accords to every person the right to equal treatment in the occupancy of accommodation. Section 19(4) then takes away that right in the case of residential accommodation and the grounds of discrimination known as family.

In other words, a person cannot complain of discrimination on the basis of family where the residential accommodation is in a building or designated part of a building that contains more than one dwelling unit served by a common entrance, and the occupancy of all the residential accommodation in the building or in the designated part of the building is restricted because of family.

In our view, that clearly excludes virtually every apartment building in Ontario. That means, especially for lower and lower middle-income people, a potent grounds of discrimination, simply based on the fact of having children, has been included in the code. That right not to be discriminated against on the basis of family has simply been taken away. We note in our brief that that may apply to condominiums as well. There is nothing to stop it. In fact, the declaration under the Condominium Act could incorporate an exclusion of families.

I think this is significant because it goes against two fundamental rationales of human rights legislation as a whole. The first is that persons are not to be adversely differentiated on the basis of objective characteristics over which they have no control. The second is that when one comes to apply for services or for employment or to avail oneself of any of the various amenities in society, an individual is not to depend on the goodwill of persons in positions of authority or in superior bargaining positions in order to assert rights which the Legislature and the draftsmen of this bill have deemed to be fundamental to all citizens of Ontario.

A provision of this sort, which takes away the right, or arguably does, not to be discriminated against for most apartment dwellers, discriminates on the basis of an objective characteristic which is beyond the control of the family. There is no requirement here that the children be noisy or abusive or even troublesome. There is provision under the Landlord and Tenant Act to evict individuals of that sort if they get to that stage.

The indirect effect of a provision of this sort is to distinguish and exclude on the basis of another objective characteristic, that being income. As I mentioned earlier, clearly this is not going to apply to detached homes and it is not going to apply to the large estates and the areas of the city and the province which do not contain apartment buildings. It is going to have a severely adverse effect on those who can do the least about it, especially in a time of extremely low vacancy rates and at a time where the choice is not wide to start with for people who are going to fit within these kinds of categories because of cost. That is a provision which is unfair, in our view, and should be removed. Our remedy here is simply the removal of 19(4). We go no further than that.

In terms of precedents, we have three provinces of Canada which have done so. One of them is Quebec which, as we know, has a high proportion of apartment dwellers just as does Ontario. The others are Manitoba and New Brunswick. They have forbidden discrimination on the basis of family and they have forbidden the concept of anti-child housing, if we can call it that. In terms of language, there is adequate language in the code as it stands, simply with the exclusion of 19(4).

Moving to what is set out in our recommendations as the second or double-barrelled recommendation, the definition of age, what we are looking at here is subsection 9(a) of Bill 7. We say that the minimum age, as a matter of principle of extending human rights to children as well as to everyone else, should be deleted. Our alternative, our fall-back position, if you like, is that if there is going to be any minimum age at all, it should be 16. I will be getting to how that can be started.

As presently drafted, subsection 9(a) provides no recognition of the substantial differences in abilities and capabilities of children, of a large segment of our society. It catches them in a single net and says that one can exclude them from the various rights under the code. It catches the one-year-old who cannot cross the street by himself or herself and the 17-year-old who has left school, who is living or wants to live on his or her own and, for one reason or another, is excluded from apartment accommodation. That exclusion, on the basis that a person is 17 years old, is legal under the proposed code. In the case of the 17-year-old who is living on his own and is looking for a job, the refusal to hire such a person on that ground alone, regardless of qualifications and ability, is legal under this proposed code.

The list goes on. We merely have to go through sections 1 through 6 of Bill 7 to capture what the consequences are of this exclusion.

10 p.m.

With respect to services, a person has no right not to be discriminated against at the corner grocery store. I have dealt with accommodation. Discrimination in employment, harassment in employment and vocational associations, sexual harassment--all of these are legal.

Without reading great excerpts from the commission's own document, Life Together, released in 1977, our view is that it simply cannot have been intended that this group be entirely excluded from such a fundamental protection. The exclusion can be perhaps explained by two possibilities. The first is that there are practical difficulties in implementing any other age--and we have thrown out another age for a minimum--and, secondly, perhaps it is impossible to draw the line anywhere else and 18 is a convenient way to do it.

Our alternative position, as I mentioned earlier, is that although 18, in our view, is indefensible, as a line-drawing exercise, if a line has to be drawn, it should be 16. We say that as a matter of principle, practical difficulties in implementation--and I expect there will be questions in that connection, so I will not go into that at this point--should not stand in the way of fundamental human rights being assured to such a large segment of our society.

We say that there is a way to accommodate those who suffer most from the sort of discrimination which is permitted under Bill 7, and that lowering the age to 16 would effectively mesh this legislation with other important statutes dealing with children of various ages, including the so-called emancipated minor and the 16- or 17-year-old, as has been discussed earlier. The Child Welfare Act, for example, applies up to the age of 16. A person cannot be found in normal circumstances in need of protection. He is out on his own as of age 16.

The laws regarding the minimum age for employment generally select 16. There are some small vasillations where it is 15 and 17, and we have a list of these which I will not be dealing with--you will be happy to know--in any detail. Under the Criminal Code, the obligation of parents to provide necessities, food, shelter and this sort of thing to children is extinguished at age 16. The 16-year-old can be out on his or her own and is left unprotected in discrimination on the basis of age by Bill 7.

The Family Law Reform Act uses the criterion of 16, where the person has, as it is called, withdrawn from parental control. The list goes on again--the ability to drive cars and so on. Sixteen is a significant age and it is one which has been chosen in numerous statutes as the appropriate line of demarcation. In our view, it should be extended if there must be a line-drawing exercise done.

It is also noteworthy that in our survey of statutes and the point at which lines have been drawn, there are almost none where the line has been drawn between 16 and 18. That group has been treated essentially as a monolithic one for the purposes of most of the statute law of Ontario. Our recommendation on that is if it is found to difficult, in terms of practical implementation or for any other reason, to simply delete the minimum age requirement, which we say is the most appropriate way of dealing with the problem, the line should be lowered to 16 and a study should be done on the feasibility of a further lowering.

Fourteen provides an appropriate line of demarcation in many instances. We could certainly be of assistance in that connection. We have already done a certain amount of research in that direction. I think I will reserve any other comments for questions which might arise.

Mr. Chairman: I know that Jim Metcalfe is here with you, although we have him separately on the agenda. Perhaps we could hear from him. Would that be agreeable to you? I am just a little concerned about the time. Mr. Metcalfe has a letter to the minister and to the committee, which I will have the clerk distribute, and then in any time we have left we would entertain questions.

Mr. Metcalfe: Hello, Mr. Chairman and everybody else. My name is Jim Metcalfe. I am a student at the Students' School and have just completed grade 12. I am making a presentation as a private citizen.

What I would like to say has been pretty well summed up. The general idea of it is in this bill, the human rights bill. I am under the impression this bill has been designed to eliminate discrimination. However, on the second page it defines "human" as not every person, but "human," as being 18 to 65. I am 17 and I feel very human, although I am not at that magical age yet. It says "human" or person is 18 to 65.

It says here that every person is equal in dignity on the first page, the second paragraph. It says: "And whereas it is public policy in Ontario to recognize that every person is equal in dignity and worth and to provide for equal rights...without discrimination..." However, on the page after that, it says, "age" means an age that is 18 years or more..."

All through Part 1, pages one through seven, it says every person is equal, regardless of origin, colour, ethnic origin, citizenship, creed, sex, age, and I emphasize age. However, this is all nullified by this. There is discrimination right inside the bill.

By not including anybody from 16 to 18 in this bill, you are condoning discrimination. It does not say in any of the bills that anyone over 16 can work. However, by not saying it, it condones it. I know. I have worked and have had to put up with this. It is the same here. By not saying it, you are condoning it. You are saying, "Well, we cannot do anything about it. It is all right to do it like that." That is another thing.

10:10 p.m.

I am not very good at this, Mr. Chairman.

Mr. Chairman: I think you are doing very well, Mr. Metcalfe.

Mr. Metcalfe: We, the 16-year-olds and 17-year-olds, are allowed to work--I assume legally--go out on our own, support ourselves and live by ourselves. However, we are not protected.

Why it is at 18, I do not know, because then there are two years that, not all kids, but most kids, have been working and supporting themselves. Some stay in school, but a fair number go out, support themselves, stay in their own apartment or flat or whatever without any protection. If you were to move this down from 18 to 16, which is not very far, it would be a lot better for everybody concerned, certainly every child concerned.

In one of your own acts, the Children's Maintenance Act, it says the parent must maintain and educate the child until he is 16. But what happens after 16, what happens then? We are protected up until the age of 16. Then there is a gap of two years, and we are protected from 18 on. That gap of two years is what I am interested in because there is no protection, or if there is, it is very little. I would like to move that it be changed from 18 to 65 to at least 16 to 65.

Mr. Chairman: Thank you very much, Mr. Metcalfe.

Have we questions of any of the presenters, Mr. Anand, the group from Justice for Children or Mr. Metcalfe?

Ms. Copps: I have a couple of questions. I was interested in something I think Mr. Anand said. He mentioned that he felt the spirit of the legislation was intended to protect all groups, including families, in all kinds of accommodation, and yet, by happenstance or accident, that particular clause happened to condone adult-only apartment buildings.

It would seem to me that the intent to condone adult-only apartment buildings is certainly there, and that there was no attempt made to include family in all areas of prohibited discrimination. I was interested because you seemed to imply that it may have been a mistake on the part of the writers of the bill.

Mr. Anand: If I implied that it was a mistake, I did not express myself very well. I think that it is pretty clear. I do say that it is contrary to the overall intent of the bill, which, as I said, is to further the two fundamental goals of human rights legislation that I mentioned earlier. By including an adults-only housing provision, you are contravening both of them and, in particular, the one dealing with people who are unable to change their situation because of objective circumstances. The real inadvertent provision which I have been wanting to point out is dealt with in our recommendation number one.

Ms. Copps: You get into all of the historical perspective in other jurisdictional precedents for reducing the age to 16, notwithstanding the issue of moving it out of the code altogether. One of the things you do not talk about is other pieces of legislation that it may or may not affect. I guess some of the people on the committee would have questions.

For example, you mention the voting age, but you do not really get into the fact that this legislation may or may not allow the voting age to stand as it is, even if the discrimination clause were removed against children or adolescents. Can you maybe just clarify that a bit?

Mr. Anand: There are really two areas which would be affected by an amendment of the sort that we are referring to. One is other statutes, which you mentioned, and the other is common law. There is a certain amount of common law, such as contracts and things like that, which would be affected.

With respect to statutory provisions, I think it is important to know that this kind of conflict would already arise under the present Bill 7 because under the Liquor Licence Act the minimum age for consumption is 19, and with the age provision being defined as between 18 and 65, something is going to have to be done with that. Either that is going to have to be changed to 18 or there is going to have to be what is called the non obstante clause in the liquor licence statute saying it will be 19, regardless of the Human Rights Code. That is a situation that has to be dealt with.

You will note that in one of the latter provisions of Bill 7 there is a two-year deferral for the primacy provisions. My understanding of that two-year deferral is that it is to permit the various ministries involved to examine their legislation, determine what conflicts arise--if they have not already, and I am sure they know in most cases--and to decide what is to be done with conflicting provisions. There are lots of conflicting provisions apart from that one.

Voting age is a good example of a provision where society has made a judgement that at a certain absolute inflexible point a person attains the indications of adulthood that are necessary in order to take on those kinds of responsibilities. That is fine, and that is one of the provisions that would have to be dealt with.

The other thing I should note in connection with statutory provisions generally is that there are two human rights codes in Canada, the federal code and the Manitoba code, which contain no definition of age whatsoever. That is similar to our primary recommendation--at least at the lower end of the scale--that 18 simply be deleted.

There have not been any untoward problems with that for the reason that that human rights tribunals and courts are sensitive to the fact that differentiation between people on the basis of one of these grounds, like sex or race--not usually race, but age more often--need not be per se a violation; that discrimination means adverse differentiation without some reasonable cause.

That is the way, for example, the Civil Rights Act in the United States has been interpreted and the Race Relations Act in Great Britain to a great extent. If a person were not permitted to drive because he was 15 or to vote because he was 17, that would not be unreasonable discrimination and would therefore not be a violation necessarily.

Ms. Copps: The reason I ask that is that if we are proposing amendments we will have to consider some of these non obstante cases that will be coming up probably over the next couple of years, but I guess you chose--I am not sure why--not to look at that aspect of the situation in your brief.

Mr. Anand: I have three pages on it, but because of time I took that out and reserved it for questions. I will be happy to answer more questions about that.

Ms. Copps: I am glad you raised the issue of the Canadian Labour Code as well because there was a question asked in the House the other day relating to the proposed changes. It referred to another situation of a minor who was being discriminated against, a female who was being denied membership in a sporting association. At that time, the Minister of Labour (Mr. Elgie) raised the issue that it should be covered under the Canadian Human Rights Code because of this lack of distinction of any age in the Human Rights Code on a federal level.

How would you respond to the argument that we do not need to put it in our code because it is covered under the federal legislation?

There is one last thing I wanted to make note of in passing. It is interesting, Ms. Callwood, that you mentioned the fact that women were recognized as persons a long time ago. It might be kind of comical for this committee to note that in Switzerland it was only this week that some of the cantons decided to recognize women as persons and there was a great hue and cry when the legislation was passed.

I wondered if you could respond to the part about the Human Rights Code.

Mr. Anand: Instant legal opinions are always difficult and dangerous, but I understand from your question you are asking whether federal legislation would cover it and therefore the Ontario code need not.

Ms. Copps: That was kind of the implication in question period. In fact, it was Marion Bryden who raised the question and the minister said that was covered under the Canadian Human Rights Code.

Mr. Anand: The Canadian Human Rights Act applies only to fairly limited activities of the federal government and of federal-type corporations, like Air Canada and CN and so on, with federal jurisdiction. The Canadian Human Rights Act cannot apply to any enterprises or activities to which the Ontario Human Rights Act would apply; they are mutually exclusive.

Ms. Copps: In other words, services that we are discussing under Bill 7 would not of their nature be covered under the federal human rights legislation.

Mr. Anand: That is right.

Ms. Callwood: I have something I think might be somewhat helpful. If, in your wisdom, you did change the age downward to 16, I would like to tell you that in the United States in four different states they have encountered the problem Mr. Metcalfe has attempted to tell you about. He has not covered the petty humiliations, the difficulties in working for less than minimum wage, which is permitted anyone who is 18, or that a number of organizations will fire 18-year-olds on their birthday because they have to pay the minimum wage, and so on. He has not told you what the horrors are, but those are some of them.

In four different states they have emancipation of minors legislation, which is very clumsy--investigations, reconciliation attempts with the families, all kinds of things--and then they say that a 16-year-old in New York, New Jersey and Connecticut can be emancipated and considered an adult for purposes of renting a room. These kids cannot sign contracts and they cannot rent because landlords will not accept their signatures. In California, interestingly enough, they allow it down to 14; they will emancipate a 14-year-old.

We are asking you to do this in the simplest possible way. Just put it into the Human Rights Code and we do not have to have all this other legislation.

Mr. Riddell: I just want some clarification on this adult-only housing. Is it your feeling that there should not be a building that is occupied only by adults?

Ms. Callwood: No. That happens in a natural way where families with children cannot afford it. There are a number of buildings like that. Very few people young enough to have children can afford the building. Very wealthy people can be exclusive; it is one of the things that goes with it.

Mr. Riddell: Let us say it is not all that expensive, the apartment in this building.

Mr. Callwood: We would say why discriminate against children.

Mr. Riddell: What kind of a case could be made then, I wonder? I am more familiar with the rural setting than the urban setting, but we have made some tremendous strides within the last 10 years to build senior citizens' units. If you do not feel that a building should be devoted entirely to adults, and if we do away with section 19(4), I am just wondering if there could not be a case made in connection with senior citizens' buildings.

Ms. Callwood: Mr. Bay has an answer.

Mr. Bay: I am afraid I would have problems citing the exact section. I believe there is a section that specifically exempts adults-only housing. We have no objection to that. As Mr. Anand pointed out, one possible solution is to differentiate by floor.

We are worried that you are protecting a right of a class that can basically take care of its own problems, married adults without children, and you are causing tremendous suffering to families. There has to be some balance, and we do not feel the proper balance is to allow the exclusion of children because in practice we have thousands and thousands of families in Toronto living under horrendous housing conditions, not because they cannot afford housing but because they are excluded from housing.

It has been pointed out by groups in Parkdale, for instance, that there are families living in bachelorettes because they are excluded from rental apartments that they can afford. Mother, father and three children will be living in a closet.

Mr. Riddell: Are we not taking rights away from adults who are maybe getting up in age, but are not yet classified as senior citizens? They may choose to settle in a nice quiet area of the city where they can live in a building which is occupied by people of their own vintage. When they come driving in in their cars, they do not want to have to get out of their car in order to move a tricycle or something to get into their parking space. They do not want to come into the entrance and trip over a toy or a bicycle or something of that nature. They do not want the children running throughout the halls. How do you restrain children?

You say, sure, have the bottom portion for families and have the top portion for these adults. It is pretty hard to keep these young people from going on all floors and creating a bit of a disturbance. I am just wondering if by giving rights to these families to live anywhere they want to live, you are not taking rights away from those adults who wish to live in a building where the units are occupied by people of their own age.

Mr. Bay: It has to be understood in all human rights legislation, and in any other legislation which protects one group, you are taking rights away from another group. It is very interesting that this kind of debate was raging in Ontario in the 1940s. It did not involve children; it involved blacks and Jews.

The Court of Appeal of Ontario in the very famous case, *Re Noble and Wolf*, in 1949 talked about a restrictive clause in deeds for the sale of land, in the words of the court: "to assure in some degree that the residents are of a class who will get along well together." The Court of Appeal found that perfectly proper and described it simply as an innocent and modest effort to establish and maintain a place suitable for a pleasant residence. That particular clause forbade sale of resort property to people of Jewish, Semitic, black, or other undesirable races. I think we have passed that in Ontario.

We have to understand that we cannot, in order to protect the rights of one group, cause such tremendous suffering to another group. I think this is what has been happening in the area of adults-only housing. But you have to reach a balance. The balance is not to exclude the families completely which is really what is being done in the bill.

Mr. Riddell: I look upon age as being totally different than race, from the standpoint that the older you get, the more prone you are to sickness and so on. If a person requires a fairly quiet setting for health purposes, then what you are telling me is, "That is tough."

Ms. Copps: On a point of order: The present act does not make any provisions for people over 65 either. So even the proposal does not protect people over 65; they are in the same category as the youth. If you are getting into the debate of senior citizens, that is another area we will have to address.

Mr. R. F. Johnston: On a point of order: Can we extend for a few minutes? Would that be possible?

Mr. Chairman: If the committee wishes for a few minutes. If we do, Mr. Renwick is next.

Mr. R. F. Johnston: I suggest we do extend for a few minutes anyway.

Mr. Anand: Could I just respond for a moment on the question of senior citizens. Somewhere here in this mass of papers have the provisions from the other provinces and the proposal that was made by city council a couple of years ago which specifically deals with excluding senior citizens' housing from the prohibition against adults-only housing. We would support that. We have that language if the committee desires.

Mr. Riddell: I would hope so because we owe our senior citizens something and I would hate to think that our senior citizens are now going to be worried about whether there are going to be people coming into the same building who are families with young children. I think we have made tremendous strides for our senior citizens, people we owe a tremendous debt to, and I do not want to take their rights away. That is the point I am trying to make.

10:30 p.m.

Mr. Metcalfe: How about the future? I assume that the kids are the future, and by taking their rights away, you are not helping much either. To state an example, when I first moved down to Toronto, I was looking for housing and I phoned this one lady. It was a beautiful apartment. I had seen it described in the paper and I phoned her.

I said, "It looks like a great apartment." And she said, "Oh, yes, it is wonderful." I said, "Is it furnished?" She said, "Oh, it is beautifully furnished, broadloom, everything, cable TV,

balcony." I said, "By the way, I have my first and last month's rent." She said, "Wonderful, when can you come over?" "I will be over after work. By the way, I am 16." She said, "I am sorry, we have just rented it out. Goodbye." Slam. Now I do not know if that is discrimination, but it is as close as I can come.

Mr. Riddell: You are surely not indicating in that case the person is trying to say that it is an adult-only building?

Mr. Metcalfe: No, but that is the impression someone would get, as soon as I stated my age.

Mr. Chairman: Is it the committee's wish that we carry on for another five minutes?

Mr. R. F. Johnston: There are a lot of bylaws, by the way, Mr. Riddell, that you can get hold of which include that exemption for seniors' buildings in terms of adult-only regions.

Mr. Renwick: Perhaps Mr. Anand can help me with this question. Let me assume for the moment that we solved the problem of the definition of person so that it includes everyone. Then we come simply to the question of this strange definition of age which is in the act. Have you got a copy of the act there?

Mr. Anand: Yes.

Mr. Renwick: I am not going to take you along, but I just want to look at the first five sections. I have no problem with three of them, but I do have problems with a couple of others. Let me start with the easy ones--without any limitations as to the age of the person, or everybody should be free "from harassment by the landlord or his agent," and so on. That is in section 2(2).

It seems to me if I read it correctly, it says you can be harassed by your landlord up to the age of 18 but not afterwards, and then after you are 65. That is the way I read that. I take it that the limited definition of age is inappropriate in that circumstance, and age, for that purpose, should not have any limitation on it?

Mr. Anand: I do not agree with that actually. I think I may have misspoken myself when I went through this earlier. I think that section 2(2) and the other provisions-- I am sorry, are you saying that the person can be harassed on the basis of age?

Mr. Renwick: Because of the definition of age, it seems to me that if you are 17 you can be harassed by the landlord, or if you are 66 you can be harassed by the landlord.

Mr. Anand: You are absolutely right.

Mr. Renwick: What I am saying is that age should not have a limitation on it with respect to section 2(2) and with respect to section 4(2). Would you and I be in agreement with that?

Mr. Anand: Certainly.

Mr. Renwick: It seems to me that there is no need to have a limitation on age for the purpose of section 3 because it is talking about, "Every person having legal capacity has a right to contract..."

Mr. Anand: I agree.

Mr. Renwick: You have a legal capacity to contract if you are 18 or over, but you also have a legal capacity to contract for necessities under the age of 18.

Mr. Anand: And you have a limited legal capacity to contract in other connections under the age of 18.

Mr. Renwick: So the law of legal capacity of contract would carry section 3 without us having a limited definition of age.

Mr. Anand: I agree.

Mr. Renwick: All right. We are in agreement on those. I need help with section 4(1) which is the employment one. It strikes me that has to have a limitation with respect to a lower limit on age. I am not arguing whether it should be 16 or 18. I tend to support your view that, for the purposes of subsection 1 it should be 16. But do you agree there has to be a limit there for employment, that a person should be able to say, "I am not going to hire you because you are too young"?

Mr. Anand: I am not sure that is necessary because of what I referred to earlier as the "reasonable classification doctrine," which has been applied by many courts. I think it is an emerging concept in human rights cases. In other words, a person should not be excluded from being hired, should not be refused employment, simply because he is 16 or whatever.

Mr. Renwick: Or 12?

Mr. Anand: Or 12, in the first instance, but rather because his age renders him incapable of performing, for one reason or another, the job functions which are necessary.

Mr. Renwick: At least there is a problem there.

Mr. Anand: I think if you have it at 16, you do not run into that problem. I agree that it is not a clear question because I do not think the jurisprudence is clear. But you do not run into it if it is 16.

Mr. Renwick: Right. In the absence of that jurisprudence, we probably, for simplicity, will have to put in some kind of a lower limit.

Mr. Anand: Especially in view of minimum age legislation, which largely says 16.

Mr. Renwick: Right. I do not mean that that is easy. I agree with you, that because of if we have to put in a lower limitation on age.

Help me with section 2(1), the occupancy of accommodation. Do you think that could be unlimited in the sense that we could let it ride on the capacity to contract for the purposes of a lease?

Mr. Anand: Contracting to lease would normally come within the exception of necessities--that is what the cases say, as far as I know--in which case the person would be bound by that contract, in any event, so that it would not be necessary.

Mr. Renwick: You could at least argue through to the point that it would not be necessary in the occupancy provision as well.

What about section 1, the equal treatment in the enjoyment of services, goods and facilities?

Mr. Anand: Again this is a point which I did not mention earlier because of time. Here we run, I think, into the differential pricing issue, for example, the barber shop which has a children's rate and an adults' rate; the Toronto Transit Commission--I am not sure if the TTC does now, but the ferry to Centre Island and that kind of thing have different rates.

Mr. Renwick: And beer and liquor--the liquor limitation, age 18.

Mr. Anand: Yes, well, that is already at a level.

Mr. Renwick: If you go into a place where there is entertainment and where liquor is served and you are a minor, you cannot get in or you cannot have a drink.

Mr. Anand: Right. That is a statutory situation. I was trying to differentiate between the statutory situation and nonstatutory situation.

Mr. Renwick: Yes, I see.

Mr. Anand: In the nonstatutory situations, I do not think you have a problem because of cases which have said that where a different treatment is applied as a benefit to a group, such as, in Alberta, where the juvenile delinquency act applies to boys at 16 and to girls at 18, that has been upheld on the basis of where there is a benefit applied, it need not be discrimination. Persons would be entitled to differentiate that way and not violate section 1 in the nonstatutory situations, in my view.

The statutory situations, such as the one you have mentioned in terms of services--and we get into all sorts of government services here as well--would have to be dealt with either on the basis of the reasonable classification doctrine, which I mentioned earlier, or on the basis of a non obstante clause or something of that sort.

Mr. Renwick: What about section 5, equal treatment in the enjoyment of membership in all trade and professional associations?

Mr. Anand: This would go hand in hand with the employment provision because we are dealing with the same kinds of minimum ages.

Mr. Renwick: Likely we would have to work out some limitation in that.

Mr. Anand: Yes. I think 16, quite frankly, would do it in that connection.

Mr. Renwick: Fine. I must say that sort of adjustment of the act in order to remove the arbitrary 18 years provision, assuming we solved the question of the definition of "person," is the kind of specific wording we would appreciate your help on. We would appreciate your thoughts on each of those sections because it seems to me if we solved the first five, we can probably make the adjustments through to the end, at least for the purpose of putting amendments to the committee so that we can discuss them.

Mr. Anand: We could flesh that out further in the same way that the drafters of this bill have done, I think quite admirably, in the case of the handicapped.

Mr. Renwick: Right.

Mr. Anand: It is a similar situation in that there are gradations. There are obviously a large variety of handicaps. In the same way, the attainment of responsibility in the case of children goes according to a gradation.

Mr. Chairman: Thank you very much Mr. Anad, Ms. Callwood, Mr. Bay, Mr. McGoff and Mr. Metcalfe for appearing before us tonight. We thank you for your brief, your thoughts and your ideas.

The committee adjourned at 10:42 p.m.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Harris, M. D. (Nipissing PC)
VICE-CHAIRMAN: Stevenson, K. R. (Durham-York PC)
Eakins, J. F. (Victoria-Haliburton L)
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Havrot, E. M. (Timiskaming PC)
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Kerrio, V. G. (Niagara Falls L)
Lane, J. G. (Algoma-Manitoulin PC)
Laughren, F. (Nickel Belt NDP)
McNeil, R. K. (Elgin PC)
Riddell, J. K. (Huron-Middlesex L)
Stokes, J. E. (Lake Nipigon NDP)

Substitutions:

Boudria, D. (Prescott-Russell L) for Mr. Kerrio
Renwick, J. A. (Riverdale NDP) for Mr. Laughren

Clerk: Richardson, A.

Assistant to Clerk: Van Bommel, D.

Witnesses:

- Arvay, J., Advisory Council Member, Ontario Advisory Council on
Physically Handicapped
- Gammage, J., Council Member, Ontario Advisory Council on
Multiculturalism and Citizenship
- Jain, Dr. H. C., Professor, Personnel and Industrial Relations
Area, McMaster University
- Sandeman, G., Executive Director, Elizabeth Fry Society

LEGISLATURE OF ONTARIO
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, June 17, 1981

The committee met at 10:07 a.m. in room No. 228.

THE HUMAN RIGHTS CODE
(continued)

Resuming consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario.

Mr. Chairman: We have four individuals or groups who wish to appear before the committee this morning. We have scheduled approximately half an hour for each one. The first is Professor H. C. Jain, Faculty of Business, McMaster University.

Dr. Jain: Thank you, Mr. Chairman and members of the committee. It is a pleasure to be here. I would like to go through this brief with you and the members, if that is all right, and then I will be pleased to answer any questions that you may have.

Before I begin, I would like to acquaint the members of your committee with my work in this area. During the past several years, my consulting and research has included several international and Canadian government agencies and private organizations. One of these is the Organization for Economic Co-operation and Development, OECD. In Canada, they include the Department of Labour, the federal Manpower and Immigration Commission, the Ontario Human Rights Commission and the Saskatchewan Public Service Commission. At the end of this brief, I have included some of my professional activities.

I would like to talk to you this morning about selected aspects of Bill 7 that deal with employment discrimination. But, first, I would like to deal with these prohibited grounds of discrimination. All Canadian human rights statutes, including Bill 7, do not conform completely to the requirements of the United Nations International Covenant on Civil and Political Rights, to which Canada is a signatory.

For instance, article 26 of the covenant provides: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination"--I have underlined these two words--"and guarantee to all persons equal and effective protection against discrimination on any ground, such as..."--and it lists a number of grounds.

I wish to draw the attention of your committee to two significant points, based on the covenant. First, the wording of the covenant requires that protection be afforded against all forms of unreasonable discrimination, not just specific grounds

that are listed. This is why I underline any discrimination. The underlined words state, "any discrimination on any grounds, such as..." Secondly, it is clear that the specific grounds listed are by way of example only.

The only statute in Canada that avoids the use of a closed list of prohibited grounds of discrimination and also satisfies the requirements of the international covenant is the British Columbia Human Rights Code. Sections 3, 8 and 9 of the code prohibit discrimination in accommodation, employment and discrimination by trade unions and employers' organizations respectively. These sections contain a specific list of prohibited grounds and, in addition, a general prohibition against discrimination "unless reasonable cause exists" for the conduct.

Let me draw the committee's attention to subsections (1)(a) and (1)(b), as well as subsection (2). Subsection (1)(a), for instance, reads: "No employer shall refuse to employ or to continue to employ, or to advance or promote that person, or discriminate against that person in respect of employment or a condition of employment."

Subsection (1)(b) reads: "No employment agency shall refuse to refer him for employment..."--and then this general prohibition--"unless reasonable cause exists for such refusal or discrimination." Let me just read subsection (2). "For the purpose of subsection (1), the race, religion, colour, age, marital status, ancestry, place of origin, or political belief of any person or class of persons shall not constitute reasonable cause." Therefore, you can see that a specific list of prohibited grounds is provided, but this list is not limiting.

On the next page I have outlined the rationale. In British Columbia, the reasonable cause provision has been interpreted by boards of inquiry and courts in such a way as to cover a wide range of discrimination that otherwise would have been excluded. For instance, physical disability, pregnancy-related illness, et cetera, have been held to be without reasonable cause and, therefore, prohibited under the BC court. My rationale for the inclusion of the reasonable cause, or some such provision, in Bill 7 is that it provides the necessary flexibility to extend protection as community standards change and new grounds of discrimination emerge.

I believe that the claims made by older people, gay people and other groups will continue to grow in strength in coming years. In addition, claims will arise in future with respect to matters that now cannot even be anticipated. In my opinion, amendments to the code to keep pace with changes and community standards are not a viable solution, given that other legislative priorities may cause considerable delay, thereby making the legislation outmoded even before it is proclaimed. Bill 7 is a case in point.

It has taken almost four years since the Life Together report to incorporate some of the recommendations contained in the report, and it will be outmoded if discrimination against older people and gay people, et cetera, are not included in this provision before it becomes the law.

The second issue is older workers. Given that age is a prohibited ground of discrimination in Bill 7, I would like to recommend that the definition of age be changed from between 18 and 65 years to 18 years and older. The idea of retiring people not because they cannot do their jobs, but just because they have reached a certain age is a fundamental violation, in my opinion, of the Human Rights Code. A flexible, rather than mandatory, retirement policy by governments and employers will permit individual workers freedom and opportunity to decide for themselves at what age to retire.

Such a policy of individual choice by workers is in accordance with the principles embodied not only in the preamble to the Human Rights Code, but also in the approach to civil liberties upon which our system of parliamentary democracy was founded and has developed. Moreover, if the charter of rights contained in the constitutional package before the Supreme Court is passed, compulsory retirement will become illegal in Canada in any event.

As Walton, the chairman of the industrial inquiry commission appointed in New Brunswick to look at the age of older workers' issue and retirement, has suggested the argument boils down to the individual citizens' rights versus administrative and managerial convenience. Mandatory retirement of a capable and willing employee is a denial of personal freedom, especially the right to work. Employer convenience cannot justify such denial of individual rights in a democracy, regardless of the number of workers who may be affected. It is obvious that the retirement age policy and pension policy are related.

I subscribe to the view, however, that the employer's pension contributions to the pension fund are part of the wages paid the employee on a deferred basis for the purpose of enabling employees to save their own money for retirement. However, this is neither the time nor the place to go into the pros and cons of retirement age policy and pension policy. Royal commissions, federally and in Ontario, as well as numerous other reports, delve into this issue at length. Suffice it to say that administrative managerial convenience should not be a bar to an older citizen's right to work.

The third issue I would like to deal with is the Ontario Human Rights Commission, specifically section 26 in Part III of Bill 7, which specifies the function of the Ontario Human Rights Commission. I would like to recommend that section 26(c) should be amended to read that the commission be empowered to undertake strategic investigation into the staffing, that is, employment, promotion, training, et cetera, policies and practices of industries, firms or institutions. Based on the findings from these investigations, the commission recommends-- and then the remaining section, as is, should be kept in the bill.

Why do I think so? While the bill recognizes the indirect or systemic nature of employment discrimination, it fails to authorize the commission explicitly to undertake strategic

investigation in order to identify and deal with the indirect discrimination, that is, staffing practices which are neutral on their face but have adverse effects on minorities by industries, firms or institutions.

The term "strategic investigation" is borrowed from the British Race Relations Act of 1976 and the pertinent US legislation as well as case law. The point is that the commission will be unable to recommend the introduction and implementation of a special plan or program unless it has the necessary background information. Therefore, section 26(c) would be useless. They cannot really do this unless they are able to carry out that investigation.

In the United States, industry-wide investigations by the Equal Employment Opportunity Commission and other equal employment agencies have resulted in massive conciliation agreements or consent decrees on an industry-wide level. Typical of such cases are the steel industry's consent decree signed by nine of the largest steel companies, the United Steelworkers of America and the American Telephone and Telegraph Company affecting that company's 24 operating companies and 700 establishments with 771,000 employees.

10:20 a.m.

Both these decrees involve several hundred million dollars in wage increases, training and promotion of minorities, including plant-wide rather than narrower, such as department and unit-wide, seniority rights. This is not to say, however, that the commission should not continue to investigate individual complaints.

The employment standards branch of the Ontario Ministry of Labour has doing essentially the same thing, that is, strategic investigation with respect to equal pay, though not as extensively as in the US. In April 1980, a special equal pay team of 11 new officers was hired by the branch to augment the efforts of existing staff with a view to monitoring compliance with the equal pay section of the Employment Standards Act and to conduct routine audits. It is the routine audits which I equate, to some extent, to the strategic investigation.

Target areas for routine audits by the branch may be selected on the basis of groups of complaints from one particular industry or from telephone calls or notes concerning a specific employer. Although it is too early to tell as to the success of the routine audit program, I understand that several employers have already been found in violation as a result of the routine audit.

I would like to make two more points about special or affirmative action programs. The present code prohibits an employer from requesting and recording information concerning the creed, race, colour, nationality, ancestry or place of origin of applicants. In order to carry out strategic investigations, or even routine audits, the commission should be authorized to grant exemptions to this provision in order for employers and employment agencies to keep such records for monitoring purposes.

The commission, in addition, should be given enough resources and be required to prepare regular statistical reports on race and sex distribution of the labour force by industry, occupation, et cetera, broken down by geographical areas in the province. This information will allow employers to compare the demographical and hierarchical composition of their work force with the labour force in the community. This information is not available at present and presents problems in meaningful affirmative action programs.

My last point concerns the race relations bureau which I would like to propose. The present bill proposes a division, not a bureau. I would like to propose that a race relations bureau, along the lines of the women's bureau in the Ontario Ministry of Labour, be created. The bureau should deal with community relations in education, while the commission should continue its role as the sole investigative and enforcement agency in the province in human rights.

There is evidence to indicate that racial discrimination in employment is the most prevalent form of discrimination in Ontario. More than half of all the employment related formal cases reported in the annual reports of the commission from 1978 to 1980 related to racial discrimination in the work place. High unemployment, stereotypes about native people and people from Third World countries and other factors contribute to numerous incidents of racial violence all over Ontario.

The incidents of vandalism, name-calling, et cetera, have been well documented in both the Pitman and the Ubale reports. There is evidence that racial discrimination is prevalent in the work place as well. Apart from several studies which document such discrimination, at least 14 of the 39 employment-related boards of inquiry and court cases under the code have dealt with racial discrimination in the work place since 1975.

These cases dealt with minority group workers being repeatedly abused and subjected to racial slurs, denied promotion or dismissed, subjected to layoffs, refused job interviews, et cetera, on the basis of race or nationality. These cases were not confined to low level workers. Professional and managerial workers in a cross-section of industries and institutions are also involved. It is, therefore, crucial that the race relations bureau be created to help ease racial and ethnic tensions at the community level and to develop an active program of human rights education and training for managers and administrators alike to help bring down institutional barriers against visible minorities.

These are some of the issues I would like to bring to the attention of this committee. I will be prepared to answer any questions or listen to any comments that you or the members may have, Mr. Chairman.

Mr. Lane: I notice at the bottom of page three, regarding older workers, you say that between the years of 18 and 65 should be changed to 18 years and over. We have had a number of

groups come to us and talk about 16 years and over because it seems to be sort of a limbo period from 16 to 18 when they are really not covered by too many things. What is your feeling about starting at 16?

Dr. Jain: I said I was directing my comments more to the older workers, but I certainly have no objection to that. I think we do have a great deal of youth unemployment in this country, and that certainly would be a helpful amendment.

Mr. Lane: So you have no objections to 16 if it were the wish of the committee?

Dr. Jain: I have no objections.

Mr. Lane: Going on over to page four, at the bottom of the page, I see you are suggesting that the commission be empowered to undertake strategic investigations into the staffing, for example, employment, promotion, training, et cetera, policies and practices of firms, industries and institutions. It seems to me that's a pretty wide swipe, isn't it?

Dr. Jain: The reason for that can be found if you look at page seven and read the British House of Commons' reasoning and what they define as strategic investigation and what is its meaning. What I am really trying to say here is that most employers, in my opinion, do not discriminate intentionally. But the industrial relations system in North America is such that neutral practices, such as height and weight, just to take those as an example of our Canadian experience, have an adverse impact on minorities, especially visible minorities.

Let us suppose that a particular employer is found guilty repeatedly. Instead of having to investigate individual complaints, I think it would be useful if the commission was to go in there, hold hearings and find out if there is a systemic pattern of discrimination, in other words, if there are built-in practices that affect these kinds of minorities which really have nothing to do with performance on the job. That is what I am really saying.

Mr. Lane: You are not really saying that they should be looking at every industry and firm and institution. You are saying that it should be a sampling or a situation where there is obviously some problem.

Dr. Jain: That is right. This is why I cite the employment standards branch, what they are doing in routine audits and the way they do it is if they have complaints on a particular company.

Mr. Lane: The way I was reading that was that you felt the commission should look at all industries and firms and I was just wondering how we were going to do it, manpowerwise, dollarwise and timewise.

Dr. Jain: That is not what I meant. What I meant was if there was sufficient evidence.

Mr. Stokes: Dr. Jain, I notice that the main emphasis in your brief was to stop things in the work force before they get to the point of confrontation. Last week we had a group here that stressed education in the schools where people have a mind set now. It is pretty hard to change attitudes in people who have held beliefs or biases or prejudice for all of their adult lives. It was suggested that this be started in the schools, to break down barriers in the educational system. We had what I thought was an excellent audio-visual presentation given us. Do you think that would be a worthwhile undertaking?

10:30 a.m.

Dr. Jain: Yes. With respect, I confine my remarks to employment discrimination because that is what I know best. That is not to say that accommodation, schools, or even the families where some of the stereotypes begin, especially in the case of females--for instance, not going into nontraditional occupations--is where the beginning should be made. Since I have done studies on the work place, I confine my remarks only to that, but I quite agree with you. I think educational institutions, homes, society in general, need to revise their attitudes.

Dr. Stokes: Since you come from McMaster University, do any of the things you have complained of in your presentation manifest themselves in the academic community? If so, what is being done at that level?

Dr. Jain: There is no question that the academic community is included. I do not think the academic community should be excluded from any of this.

As far as McMaster is concerned, it so happens I am chairman of the senate human rights committee. We are now coming up with a policy for the McMaster University senate which is designed to take care of some of the comments I have made. The policy will provide appeal procedures to undergraduate students, graduate students, faculty members and the academic community at large. We hope to propose this to the senate of the university. We are aware that these problems are as present at educational institutions as they are at other institutions.

Mr. Stokes: I noticed that in the list of activities you were involved in you included the Organization for Economic Co-operation and Development. What precisely were you involved in with OECD as it applies to your presentation here this morning?

Dr. Jain: I was doing a study of disadvantaged workers on the labour market. I was looking at six countries--West Germany, France, Sweden, Britain, the US and Canada. What I was interested in were the policies that the governments have toward disadvantaged groups. I included the handicapped, older workers, younger workers, women, racial minorities and guest workers in Europe. These were some of the workers I was interested in.

I was interested in what lessons we could learn in Canada.

That was the purpose of doing that study for the OECD. It has some recommendations--nine--which I think are relevant to governments in general, especially to the Canadian government and the provincial governments in particular.

Mr. Chairman: We have two more people who wish to put questions to you.

Mr. Eakins: Dr. Jain, my question follows more along what Mr. Stokes has just asked you.

Rather than simply seeking legislation to cure some of the ills, what recommendations would you make in order to bring about greater understanding among people, rather than simply saying we need stronger legislation? I am sure that while you are making a presentation in one particular field, you must have some thoughts, with your great background, as to what specifically might be done.

Also, do you see organizations that are really not pulling their weight or making a contribution to this, especially schools, the education system and churches which sometimes, I think, do not speak out enough? I wonder if you have some thoughts on some of the organizations that are not as active as they might be? It seems to me that the answer is simply not always seeking legislation to cure an ill. We should be treating the problem before it gets to the need for legislation. I am wondering if you could enlarge on that.

Dr. Jain: You are quite right, Mr. Eakins. I think that legislation, though, helps those people in the community who are generally law-abiding citizens, but who are pressured, due to one reason or the other, in going along with racially prejudicial attitudes. So legislation is very helpful. It provides a climate. It says, "This is the public policy of Ontario."

However, that is not where it starts. Legislation is necessary, but it does not by any means take care of all the educational program. This is why I suggest that we have a racial issues bureau whose sole function should be education in community relations because that is where we have failed to a great extent. If you look at the funding provided for the Ontario Human Rights Commission, I think in 1976-77 the Life Together report reported 15 cents per capita in Ontario. We spend more on lotteries. We spend more on other things. I think you have a good point that education at the community level is a very important ingredient of anything we do.

This is precisely the reason for recommending a separate role be provided for the race relations bureau. I think that is the function they should be undertaking.

Mr. Eakins: I agree with you. Personally, it has always bothered me that sometimes we do not understand the history of our own country well enough through our educational system. On a personal note, it has bothered me too that those who want to show some discrimination, whether it is race or colour, are some of the people who wave the flag and say they are great supporters of the monarchy and of keeping our British traditions. But some of these are the people who forget who makes up the Commonwealth.

Some of these people think the Commonwealth is simply England, Scotland and Wales and they forget that they want it both ways. They forget that the Commonwealth involves many countries they have probably never even heard of. There is a great educational value in that, just knowing who comprises the Commonwealth. If they want to keep the Commonwealth strong, then they had better keep the whole Commonwealth strong, not just the two or three countries they think make up the Commonwealth.

Dr. Jain: I could not agree more.

Mr. R. F. Johnston: Professor Jain, most of the points you raise I concur with. Whether or not the specific wordings would be the same, the intents are very similar in terms of some of the amendments I talked about our party introducing.

There are three things I would like to ask you about that you did not mention specifically. One has to do with the covenant. You referred to the covenant of the United Nations. One of our proposals is that that be recognized in the preamble. At the present time it is not; it just goes back to the earlier one. I wonder if you would be in agreement with that?

There is a second covenant, as I understand it, which also has economic rights and which has broader ramifications. I want to know whether or not you think that should be mentioned.

Dr. Jain: Absolutely. I quite agree with you. I think that should be mentioned. Canada is the knitter, as I said in my brief, and we should try to bring it into the preamble to the Ontario Human Rights Code.

Mr. R. F. Johnston: One thing you did not talk about in your presentation was the independence of the board. Symons' report made a good deal of the fact that it would be better if the commission was not directly responsible to a particular minister, but was responsible to the Legislature, perhaps through the Premier. Do you have any feelings on that?

10:40 a.m.

Dr. Jain: I actually would like, if you would allow me, to go on for a couple of more hours because I tried to only highlight three or four issues. I certainly have very strong feelings on that. I think the commission should, as in Quebec and in the Canadian Human Rights Commission, report directly to the Legislature. I like the feature that this bill has supremacy, but that is not carried forward by having it reporting directly to the Legislature. I certainly support that and have been very much in favour of that for a considerable period of time.

Mr. R. F. Johnston: The third thing has to do with money, for education, for the commission for that and for investigation as you mentioned. I am presuming that you recognize in your idea of an expanded commission that there is a need for a great deal more money.

Dr. Jain: Oh, indeed.

Mr. R. F. Johnston: Perhaps I did not read or listen carefully enough, but what about the need for research, less specifically in terms of the investigation of a particular group of corporations, but in terms of an issue like that of gay rights, and taking some responsibility for providing background material and so on for discussion and for legislative change? Is there a role there that is not now being undertaken that should be undertaken?

Dr. Jain: I think one of the unfortunate things is that because of the constraints on the budget for the commission I referred to earlier, we really do not have any in-depth studies available to us in Ontario.

I find it very hard, for instance, to even find out such basic information as to how long boards of inquiry take in order to make a decision, let alone the kinds of issues you are referring to. You almost have to pull teeth in order to get the information. It is always confidential. We are dealing in human rights. Why should information like that be confidential?

We, as citizens of this province, should have this information available right now. Most of the work of the commission is confidential. For instance, in private settlements that take place we have no idea what issues were discussed in those private settlements. We have no idea what kind of compensation, if any, was achieved. All we have are a few boards of inquiry which are public.

I would certainly like to see a great deal of information for the guidance of people who have complaints, and not only for that, but also for the main purpose of the Human Rights Code which, as some of the honourable members have mentioned, is education. Most of the effort of the commission is not in education because if these settlements and complaints, et cetera, were made available, that is an automatic kind of education which we are not being fed at this moment. I certainly would see that as a very important role and I implied that in my investigation. I think I implied that the commission has to have the resources in order to do this.

Mr. Chairman: Thank you very much, Professor Jain, for your brief to us this morning and for answering questions of the committee members.

The Ontario Advisory Council on Multiculturalism and Citizenship is next.

Mrs. Gammage: We are very pleased to have an opportunity to address this committee because, as one of the committees of the Ontario Advisory Council on Multiculturalism and Citizenship, we see human rights as a focal point in our society. I will quickly read the brief since we did not have a chance to give it to you previously so that you have the time to peruse it, and then we would be more than happy to answer questions. You will realize, of course, that I speak on behalf of a subcommittee of the council, representing all the ethnic groups across this province.

The Ontario Advisory Council on Multiculturalism and Citizenship congratulates the Minister of Labour (Mr. Elgie) on introducing a bill which proposes many significant amendments to the Ontario Human Rights Code. It has been apparent for many years now that the present code has not been effective in adequately addressing the variety of issues related to human rights because of its own limitations, the lack of sufficient funding and personnel to deal adequately with complaints registered at the human rights commission.

Therefore, a bill to revise and extend protection of human rights in Ontario is welcome and seen as a positive and necessary step in fulfilling the present Ontario policy of multiculturalism, the three main tenets being equality, access, participation and sharing.

The Human Rights Code can be regarded as tangible evidence of the province's support for and commitment to multiculturalism. Therefore, any measure which recognizes and responds to the diverse composition of Ontario's population, whether in terms of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, marital status, family or handicap should be applauded.

We are pleased that the explanatory notes clearly state that protection in employment is now extended to domestic workers. For too long this productive segment of the population endured hardship and discrimination without any easy access to redress or appeal.

That this bill should bind the crown and have primacy over other legislation assures us that the government has recognized that human rights must be given, and seen to be given, top priority. Until the rights of the minorities and disadvantaged within our society are protected and secure, the rights of the majority are also in doubt.

We note, as well, that the commission is empowered to recommend the introduction and implementation of affirmative opportunity programs. It is hoped that such programs will be adequately funded and that the public will be properly informed as to the rationale, advantages and long-term benefits to be derived by all segments of society.

The notion of quotas as well as reports and results of the United States' experience are too often used as arguments or deterrents against developing a truly imaginative innovative Canadian model suited to the needs and conditions of our society. A name change to affirmative opportunity, with a precise definition, would be a first step in this direction.

Confusion, ambiguity and comparison with US programs would thus be avoided. And here I refer specifically to Life Together which states, "requiring employers to hire quotas." At our council, this has been an issue on which people have very strong opinions, and many people see affirmative action as meaning quotas.

But I firmly believe in, and many people on the council would accept, the argument on page 34 of Life Together which says: "On the hiring of quotas, the commission believes that this is a crude and simplistic approach to a complex problem. Such approach casts doubt on the legitimacy of minority groups' achievements. Moreover, it betrays the basic principle of equality of opportunity if people are given jobs or promoted not because they are competent, but because they belong to a minority group."

We feel very strongly that the whole focus or thrust of the program should be to improve the qualifications and opportunities of traditionally disadvantaged groups, rather than to extend preferential treatment to them at the cost of discriminating against others. I certainly would hope that the program has that thrust in mind.

10:50 a.m.

The council is also encouraged to note that some recommendations made in the 1977 Ontario Human Rights Commission publication, Life Together, have been incorporated into the new code. However, recommendations dealing with the autonomy of the commission have been neglected. It should be noted that at the semi-annual meeting of the council on June 20 and 21, 1980, the human rights and anti-defamation committee supported recommendations 15 and 16 on page 94 in Life Together. Both these recommendations explicitly indicate the reasons for having a commission responsible to the Legislature, through the Premier or his appointee.

Although for the most part Bill 7 can be regarded as an overdue, comprehensive overhaul of both the code and the commission, we wish to point out areas where we see the need for clarification and/or amplification. It is in this spirit of goodwill, and with a desire to create a more humane and just society, that our council speaks of sections of the bill we find wanting. At this point, I should point out that we are not a special interest group and, therefore, we look it at in an overall perspective, rather than speaking to any particular issue or group.

In section 8, we suggest that this section be reworded to read as follows: "No person shall infringe or do anything directly or indirectly with the intention of infringing a right under this part." It is our feeling that the wording should clearly address the issue of intent and/or deliberateness of action.

Section 9, paragraph (a): The definition of age is also, as I have gathered in listening to you, something that a lot of people are concerned about, and what happens once a person attains the age of 65. We had a lot of discussion whether or not, when someone become 65, he can then be discriminated against in terms of services and accommodation or harassed in employment. We wanted that clarified. We are deeply concerned about the interpretation of age as defined by this section and so seek clarification of the intention of the limitation proposed, particularly in the light of the changing demographic mix of Ontario's population.

In section 9, paragraph (d), on dissemination, it says "communication by whatever means." We interpret this to include the use of postal, telephonic and electronic communication. Because these areas all fall within federal jurisdiction, we fear that the Ontario Human Rights Commission would be powerless to investigate, lay charges or deal with discrimination as noted in this subsection.

A complainant, and we often find they are not knowledgeable about this division of jurisdiction in the area of communications, would likely file a complaint with the commission because the present wording would suggest that the commission would be empowered to act. May we therefore suggest that the wording be specific, defining precisely what is meant by "whatever means."

Certainly, in a previous council, we were very concerned about telephonic hate messages. At this point, although a man was brought before the courts, the Ontario council felt that it was getting nowhere because this was really a federal jurisdiction.

In section 9, regarding harassment, as lay people, rather than lawyers familiar with interpreting statutes, we want to be sure we understand the full intent of the law. Therefore, we endeavour to suggest changes which would remove ambiguity, especially if such ambiguity is likely to result in complaints not being filed. You will notice that as we went through the bill we thought that certain sections were not clear. Many people would like to file complaints, but it has been our experience that if the bill is not clear to us, it would also not be clear to them.

The phrase "reasonable and bona fide" is used here in other sections of the bill, for example, section 20. May we suggest, if at all possible, that a precise and clear definition of the phrase be provided in order, again, to avoid lengthy arguments hinging on variations of interpretation.

As a multicultural council, we are very much aware that people bring to this country the baggage of their heritage. So sections 14 and 15, as in the previous Bill 209, concerned us. We were fearful that people in the years prior to getting Canadian citizenship would somehow suffer discrimination because they were not Canadian citizens and, in having access to and being encouraged to participate in, cultural, athletic and educational opportunities, it would perhaps result in their not being able to function as they should and to enjoy what the multicultural policy says--access, equality, participation and sharing.

Therefore, we wrote to the minister about that section. At this point, we are pleased with the changes made in these sections of the new bill. The inclusion of landed immigrants, persons lawfully admitted to Canada for permanent residence, in section 15 is welcomed by the council, especially in the light of an earlier communication with the minister regarding our concern about the exclusion of immigrants from developing participation, particularly in cultural, educational and athletic activities.

Section 23(3) does not appear to contain any time limit or restitution provision after the offending party has demonstrated good faith and made amends to alleviate the grounds for a complaint. Surely the bill's intent is to provide justice, to correct and teach rather than merely punish by applying sanctions indefinitely.

Since record of offences is now a prohibited ground for discrimination, may we suggest that the offenders of the Human Rights Code, who comply and indicate a willingness to abide by the code, be duly considered for contract, grant, contribution, loan or guarantee so long as a mechanism exists whereby monitoring of practices is possible.

Enforcement, section 30(3): We note that a person may investigate a complaint without a warrant. Again, this is an area of concern. This provision may be ill-perceived and may lead to abuse in actual life. In the opinion of the council, this provision does require further deliberation. The maxim of law that every citizen is innocent until proved guilty is apparently being violated in this situation.

Section 31: There does not appear to be a time limit for the commission to respond to the complainant if the commission decides not to deal with the complaint. Surely if the complainant's case is not to be considered by the commission for whatever reason, frivolous or otherwise, then it is essential that the complainant be advised of this as soon as possible, within a 30-day limit.

Waiting for months or years, as we currently know is the situation, in anticipation of a case being heard, destroys credibility in the effectiveness of this commission not only to respond, but to deal sensitively with matters relating to the human condition. Perhaps this suggestion concerns procedure rather than statute. In any event, there should be built into the system a mechanism for the expeditious processing of complaints.

Section 33 is a section with which we had a great deal of difficulty because it appeared to us that if a person's complaint was not heard, going back to the commission to have it reconsidered was not something the complainant would do quickly, or feel that the case would be dealt with impartially. We are not sure that the rewording is adequate, but perhaps it does demonstrate the concern which we have.

We suggest in section 33 a rewording as follows: "Where the commission fails to effect a settlement of the complaint, the commission shall request the minister to appoint a board of inquiry and refer the subject matter of the complaint to the board. The board shall review the merits of evidence submitted and a final decision made within 30 days from the date of receipt of any further evidence or request for consideration."

11 a.m.

As I said, we were very concerned that once the commission dismissed the complaint, there did not seem to us to be adequate

means of appeal. Our feeling is that there should be a board of inquiry whenever a settlement has not been reached. Therefore, subsection (2) of section 33 would then be deleted. Our concern revolves around the right of appeal by the complainant who, in order to have a hearing, would have to request the commission to reconsider its decision. It is our feeling that a review procedure by a board of inquiry would better serve the purpose in order to ensure impartiality.

Again, that having been done, we look at section 34 and suggest the word "may" be substituted by "shall," and delete the last part of the sentence, which says "if it considers it advisable to do so."

Section 38: We are pleased with the increase in the amount of monetary compensation for mental anguish and in the fine on conviction. Such amounts, as stated, indicate that contravening the code is a serious offence and that those who are found guilty will not just be tapped lightly on the wrist. The fine, we feel, will act as a deterrent, discouraging discriminatory practices.

The Ontario Advisory Council on Multiculturalism and Citizenship, through its human rights and anti-defamation committee, is pleased that it has had the opportunity to speak to a bill which we know has implications for effect upon the lives of all residents of Ontario.

As the categories listed as prohibited grounds are examined, it soon becomes abundantly clear that everyone at some time or other falls within one of the groupings which obviously could be the basis for discrimination. We, therefore, speak out on behalf of all communities which the council represents, rather than for any particular special interest group.

It is our fervent hope that as we live and work together in Ontario, the multicultural makeup of our province will be reflected in its laws and practices so that all groups, whatever the labels, will truly experience that which the multicultural policy advocates--equality, access, participation and sharing.

We hope that our presentations, made by the various groups, will be carefully considered and that the bill, which will become the new Human Rights Code, will be one of the mechanisms for promoting and ensuring the realization of the egalitarian ideal which the multicultural policy promises.

Mr. Chairman: Thank you very much, Mrs. Gammage. Are there any questions?

Mr. R. F. Johnston: That was a well-thought-out report. Thank you very much. I agree with a number of the areas that you raise. The question of age and the definition of age is something we have been trying to come to grips with. You are essentially suggesting a maintenance of 65 in terms of employment, but of making sure that it does not work against people in terms of accommodation, harassment and other kinds of things.

Mrs. Gammage: We understood that in terms of employment, there was something to do with the pension. We were not exactly sure how that would impinge upon this bill. We felt that 65, given the changing demographic nature of Ontario, would put limitations. We felt that putting an age limit was not something we wanted to see in place. We felt, for pension reasons, there could be stipulations, but we were not exactly sure and we were not completely conversant with that section of the law. Therefore we did not want to deal with it and display our ignorance.

Mr. R. F. Johnston: Where do you stand on the other end of things? We have had presentations here about the lowering of the age. In one case, an argument was made that there should be no ages mentioned at all in the act so that children, of any age, would have the same rights as adults. Then a fallback position was provided last night of moving to 16 because there is a group of people of between 16 and 18 who are not covered.

Mrs. Gammage: I would think--although this is without discussion with the council--we would perhaps prefer no age at all, because we feel that children should not be discriminated against. On the other hand, we would not want children being employed, such as has happened in the past where they were subjected to abuse. Employment does create a difficulty, but I do not think we have studied it adequately to say to you what it should be. At this point, we would have said 18, but 65 is something we have a lot of difficulty with.

Mr. R. F. Johnston: Section 33 is something we have been concerned about as well, the appeal process. One of the recommendations we were thinking of making as a caucus was that the appeal process would still be within the commission, but that the same people could not hear the case. Under the present act the same people who had already decided the situation could then decide again on another person's situation.

You are suggesting a whole other approach, a mechanism by which the minister would establish a board of inquiry. In a sense, you may be seen to be establishing another level of bureaucracy under the control of the minister rather than under the control of the commission. I am wondering where you people stand in terms of the independence of the commission. Some of us are recommending that it not be through a specific minister, but instead be through the Premier and through the Legislature.

Mrs. Gammage: Yes, very definitely. In June when we submitted our recommendations to the government through the Honourable Reuben Baetz, we felt that the Ontario Human Rights Commission should be an autonomous body. As the brief indicated, it should be perhaps through the Premier or through his appointee in cabinet, but not be an arm of any particular government.

We further suggested that if indeed it were to be an arm of government, at that point we felt it should be through the Solicitor General, given the judicial aspect of some parts of the statutes. We felt that, granted employment was the significant

area in which discrimination did occur, broadening the scope and broadening the prohibitive grounds, there would be many other areas that would come into focus. We did not feel that the Ministry of Labour was the right place for it to be anyway.

In addition, we also saw that through the Solicitor General there are already storefront operations. We feel this will also make the commission more accessible to people than being stuck away at 400 University Avenue. At the present time, we understand that there is no mechanism whereby that could take place through the Ministry of Labour. If it should be in the Ministry of the Solicitor General, then it would be easier to put storefront operations in place and thus make the commission more accessible.

We were not very pleased with the response we got back from the government, saying that the government believes that the human rights commission does not experience interference. We did not feel that was an adequate response to our recommendation.

Mr. R. F. Johnston: I have two other short items. One is on affirmative action. I am sympathetic to the notion of not moving to the American quota system because of the problems that has caused there, specifically with small employers and contracts with the federal government. But I am very concerned about the lack of teeth in the bill in terms of the rights of the commission, and of doing anything other than recommending action. You seem to be accepting the notion that was put forward first by Symons and which is accepted in this bill, recommending that action is all that is required rather than the capacity to order affirmative action and to monitor and do all those other kinds of things.

Mrs. Gammage: Yes. I guess we see the commission as having a responsibility in terms of education. At this point, we did not see the commission as ordering but as recommending. The previous speaker mentioned places of employment which are able to keep on file the makeup of their employees. If that is monitored, at that point they would recommend that affirmative action programs or affirmative opportunity programs be in place.

Mr. R. F. Johnston: How does that get enforced, the obligation to undertake that action?

Mrs. Gammage: We were looking primarily in the area of contract compliance where it has some relationship to that, rather than in the private sector as a whole.

Mr. R. F. Johnston: I won't belabour the point. I think it is a major weakness in the bill at the moment.

I agree with you that the increase in the monetary compensation is a good thing. One of the things I would recommend is that there be no ceiling put on it. Do you agree that the ceiling has been arbitrarily chosen?

Mrs. Gammage: We agree with the ceiling at this point. But, on careful consideration, given inflation and what have you, it is conceivable that this is not something in the nature of the

Medes and Persians that cannot be changed. We certainly hope it is not going to take four years down the road for any kind of significant change to occur. We at the committee accepted that because we felt it was a substantial increase over what had been previously suggested.

11:10 a.m.

Mr. R. F. Johnston: The principle I am dealing with is whether or not we should have to wait for a legislative change to have a ceiling changed or whether the commission in the judgements it undertakes should be able to do it.

Mrs. Gammage: That would certainly be a much better procedure. I would agree with you there, yes.

Mr. Lane: I would like to congratulate the council and the young lady on a very positive, well-presented brief. Your attitude toward Bill 7 is commendable.

On page four, what do you really mean when you are talking about the term "harassment" in section (9)(g)? You go on to say that, as lay people, you do not really understand the language of the bill. If that is all you are saying, don't feel lonely because I don't either. Any statute or any bill I have ever seen has seemed to be written so that it would deliberately confuse me. For example, something that was given in section 4 may be taken away later in 6 or 7.

Is that all you are saying or are you saying something more there?

Mrs. Gammage: We sat around and, in a joking kind of way, one fellow said, "If I whistle at you because you have on a pretty dress, is that considered harassment, or if I do it two or three times?" We began to think about it. We did not feel that what was there was adequate because we were not clear.

Mr. Lane: What is your interpretation of harassment? If you were to write that section of the bill, how would you write it? This has caused us some concern too. I am curious to hear your reaction to it.

Mrs. Gammage: In one section it talks about "persistent." I cannot recall exactly where. It would seem to me that something of a persistent nature is something that we want to consider. I certainly do not think that, as this fellow said, "If I were to say to you once, 'That's a pretty dress,'" that I would consider it harassment. On the other hand, if someone patted me on the bum two or three times and I said, "Look, I don't like that," I would consider that to be harassment.

Mr. Lane: You have answered my question. It would be a dreary world if we could not give people compliments in a nice way. I guess you are saying the same thing. We can say to our secretary or wife or whoever, "That's a nice dress you have on; it

makes you look very sexy," or something, and that is not harassment. But if we wanted to persist in some type of approach that you did not like, then it would be harassment.

Mrs. Gammage: It says, "in the course of vexatious comment or conduct." But we have difficulty with it.

Mr. Lane: It is rather hard to define. I was curious from the way you had it worded whether it was the words that were confusing you because you are making some recommendations.

Mrs. Gammage: It is the words rather than the grounds. We certainly feel that those grounds should be in there; there is no doubt about that. But as to the specificity of a wording, that is where the difficulty arose.

Mr. Stokes: You seem to be saying that the Ministry of Labour is an inappropriate vehicle for the commission to be presenting their reports for review by the Legislature, I take it, rather than the government. Is that a fair assessment of your position?

Mrs. Gammage: No, it is not. We are saying that we would request and would highly recommend that the commission be an autonomous body, much the same as the Ombudsman. If, however, it does have to report through a ministry or be an arm of a ministry, a more appropriate place would be in the Solicitor General's ministry rather than the Ministry of Labour. Our feeling is that, in spite of the fact that discrimination in employment does constitute a significant number of complaints, now that the code has been broadened, there will be many other areas in which employment would not be the basis upon which discrimination has taken place. We just feel that tying it in with the judicial part would be a much better placement.

In addition to that, even though we do not mention it in the brief, the fact is that ministry has storefront operations within its present mechanism. I know that at some point when I spoke to someone at the commission, this difficulty was mentioned. I did speak with Dr. Crittenden and some of the other commissioners and we voiced the idea of having storefront operations to make the commission more accessible to people. We were told then that is not the way the Ministry of Labour operates.

There are many reasons for our suggesting that it be there, but our primary aim would be for it to be independent and autonomous.

Mr. Stokes: Why would you not suggest that the ministry from which you get your funding, the Ministry of Culture and Recreation, whose responsibility it is to foster multiculturalism, and specifically your committee, the human rights and antidefamation committee of the advisory council--why would you not think that the Ministry of Culture and Recreation, whose mandate it is to foster that, would not be an appropriate vehicle?

Mrs. Gammage: For one thing, we do not feel it has the kind of profile we think human rights deserve. I do not think the

council considered it, but certainly in my consideration, speaking as one person, I do not see that as the adequate place for it.

Mr. Stokes: My final question: You mentioned in two or three different places in your brief that you represent all of the communities rather than any particular special interest group.

Mrs. Gammage: Yes.

Mr. Stokes: Most of the things you mention in your brief deal with the entire range rather than a specific group. I am wondering if there is anything in your activities, either with the council or your specific committee, that has focused your attention on the way in which we treat our first citizens as opposed to people from Third World countries who come to make a life in Canada.

I have attended quite a few of the regional meetings of your group and I noticed that the participation of our first citizens, our native people, was inadequate and, in many cases, nonexistent. Is that because our relationship with our first citizens is not a problem in the eyes of your council, or is there some other reason for it?

Mrs. Gammage: As you know, this council was appointed by the Legislature, in cabinet, and the representatives are from a very wide cross-section of the population of Ontario. There are native people who sit on the council and one is a member of this committee as well.

Some of the recommendations we made previously in June dealt with some of the discrimination we felt our first citizens have experienced. We did not deal with it in this bill because we feel that they are citizens of Ontario and, therefore, whether someone is from the Third World or the Second World or the First World, including native persons, it is applicable across the board.

I am not quite sure which regional council meetings you are referring to, but certainly in the last year and a half of the council's functioning it has been our intent to invite as many people as possible, given the location and given the nature of the meeting.

I will tell you that, with regard to the recommendations we made in June, whenever they referred to the native people invariably the response came back to us that that was a federal responsibility. We recognize the game that has been taking place, the tossing back and forth.

We mentioned housing. We made recommendations about the housing of the native people. We made recommendations about the education of the native people. We have studied the Indian Act and looked at discrimination against women in the Indian Act, although we did not deal with that in our previous recommendation to cabinet. But we were told that the areas of housing and education were federal responsibilities.

11:20 a.m.

Mr. Chairman: Thank you very much, Mrs. Gammage, for your presentation to us this morning.

Representing the Elizabeth Fry Society, Gillian Sandeman, executive director and the former member for Peterborough.

Ms. Sandeman: Mr. Chairman, I should perhaps introduce my remarks by reminding the members what the Elizabeth Fry Society is.

The Elizabeth Fry Society is a private agency in Toronto which for the last 30 years has been working with female offenders and ex-offenders. We have, in Toronto, 30 years of understanding public attitudes towards offenders and the problems the offenders face. We are part of a network of Elizabeth Fry societies across the country and, of course, we are very much involved with related agencies such as the John Howard Society, the Church Council on Justice and Corrections and many others that are interested in changing public attitudes about offenders, and also more directly involved in penal reform.

We felt it was important to speak to Bill 7 because it is no secret that widespread discrimination exists in Ontario, as it does elsewhere, against people with criminal records. This discrimination most often, although not exclusively, takes the form of denial of employment or access to accommodation. The exercise of such discrimination is a second, and unlawful, form of punishment.

We have, through the justice system of Ontario and Canada, legal means for expressing society's displeasure with minor criminal activity and abhorrence of, and punishment for, more serious crimes. We have a far-reaching network of sanctions and controls on offenders, including imprisonment, parole, probation, fines, community service orders, victim-offender reconciliation programs and restitution orders. It is through such measures that we as a society have decided to punish the offender, and through such measures that we attempt to embody the concept that offenders have some obligation to repay society for the damage done.

Many people would argue that the justice system is not perfect; however, I do not believe that in Ontario we really wish to deal with this by condoning extra-legal forms of punishment. We have, however, behaved as if the second punishment imposed by society is acceptable. A blind eye has been turned to the discrimination, both blatant and subtle, that this has produced.

It was a notable deficiency of the original human rights legislation in Ontario that it did not include "record of offences" among those grounds on which discrimination is prohibited. This omission was addressed in the Ontario Human Rights Commission's report, Life Together. The commission, you will remember, recommended that "criminal record" be added to the Ontario Human Rights Code as a ground on which discrimination is

prohibited, with provisions for exemptions to be granted in cases where, in the commission's view, criminal record may be a valid consideration.

At first sight, it would appear that Bill 7 has followed the recommendations of the commission and made it impossible to discriminate against someone simply because he or she has a criminal record. In fact, this is not the case, and the bill as it stands is deficient in certain important respects.

Worse, the bill itself appears to sanction and legalize particular forms of discrimination against certain groups of offenders. This surely could not be the intent of a bill whose preamble claims as its aim "the creation of a climate of understanding and mutual respect for the dignity and worth of each person, so that each person feels a part of his community and able to contribute fully to the development and wellbeing of the community and the province."

Part I of the bill recognizes those areas of daily life in which discrimination most commonly takes place; but unfortunately only section 4, the section referring to the rights to equal treatment in hiring and in the work place specifically mentions that a record of offences is a prohibited ground of discrimination.

The omission of this ground in the sections dealing with services, section 1, accommodation, section 2, contracts, section 3, and vocational associations and other groups, section 5, can only mean that while an employer may not discriminate against someone with a record solely on the grounds that she has a record, a landlord may legally refuse to rent the same person an apartment on precisely those grounds.

We would like to recommend that sections 1, 2(1), 2(2), 3 and 5 be amended by the addition of the words "or record of offences."

There is no other group mentioned in the bill which is omitted from some sections in that early part of the bill. As far as I can see, each of the groups--race, ancestry, place of origin, colour and so on--are mentioned throughout. It seems to me extraordinary that record of offences, having been now recognized as a ground of discrimination, should only appear in the employment section, and we would like to strongly urge an amendment to bring those sections into line.

Even with that amendment in place--if you were to pass such an amendment--any positive effect for ex-offenders which the bill in its present form may have is almost totally negated by the narrowness of the definition clauses in sections 9(i)(i) and (ii), which say that "'record of offences' means a conviction for, (i) an offence in respect of which a pardon has been granted under the Criminal Records Act (Canada) and has not been revoked, or (ii) an offence in respect of any provincial enactment."

It is true that large numbers of people do have records because of convictions under provincial acts, generally the motor

vehicle or liquor statutes. A much smaller number have sought and received a pardon under the the Criminal Records Act. Currently, I think, about 1,000 people a year are taking advantage of that act.

To limit record of offences in this way, however, means that it is still possible and legal to discriminate against those thousands of people in Ontario who have convictions under statutes other than the provincial statutes, merely because such a conviction exists. Such discrimination can and does take place, for instance, when employment application forms ask the question, "Do you have a criminal record?" When the answer is "yes," there is frequently an automatic rejection of the applicant, who has no opportunity to explain in an interview the circumstances and background of this record. No further consideration is given to qualifications, experience or skills, or whether or not this past offence would in any way affect the applicant's ability to perform the duties required.

If the bill is passed in its present form, employers need only amend such application forms to read, "Do you have a record for any offence other than those under any provincial enactment?" Then they would be able to continue with their now legally sanctioned discriminatory procedures.

We would like to recommend, as our second recommendation, that section 9(i) be deleted and replaced by a new section 9(i) which would read, "'offences' means all offences for which there has been a conviction or discharge under the Criminal Code or other federal legislation, and includes offences under provincial legislation."

The bill provides excellent protection to both employer and job applicants in sections 21(6)(b) and 22. Section 21(6)(b) says that, if a person refuses to employ another for reason of a record of offences, this can be a reasonable and bona fide qualification because of the nature of the employment. Section 22 says, "Notwithstanding that the employment is of a kind to which section 16"--et cetera--"applies...an applicant shall not be refused the employment on a ground set out in section 16 or section 21(6) except after personal interview."

11:30 a.m.

I take it that the intention of section 21(6) is to protect the employer, and that the intention of section 22 is to protect the employee, and I think those are good sections. Extending the prohibited grounds of discrimination so that all ex-offenders are included would not change this. Employers would still have the right to refuse employment, where there are bona fide reasons for doing so--and the nature of an offence might well be one such reason--but applicants would still be assured that they could not be refused employment on any grounds set out in the legislation except after a personal interview.

Such an interview should probably consider such factors such the nature of the offence of which the applicant was convicted, the time when the offence occurred--was it yesterday or was it 20 years ago?--the applicant's record since the crime was committed and the special requirements and responsibilities of the position.

The John Howard Society of Ontario made an excellent submission to the public hearings of the Ontario Human Rights Commission back in 1976 when the code was being reviewed. They suggested that it might be a good idea, for instance, to set up a directive for employers when considering an applicant for a job who has the necessary qualifications but also has a criminal record.

It was suggested that the following considerations should be included: When did the offence occur? Was the applicant's previous employer a direct victim of an assault or a theft or arson or vandalism or whatever? Did the previous employer's business suffer because a customer was victimized by the employee? Was the previous employer's public or business reputation damaged because the employee was an offender or an accomplice in a notorious offence? Was the offence of a nature that could upset the morale of the employee group, or give due cause for concern about employees' safety or that of clients, adults or children in the immediate area; for instance, female employees working in unprotected areas if the offence committed was rape or indecent assault?

I think that if the answer to all of those questions was no, and the employer felt the prospective employee could do the job, then there would be no reason for refusing to employ just because there had been a previous offence. We would like to suggest that the application of this kind of common sense, rather than prejudice, during the hiring procedure should ensure that discrimination does not take place in the work force.

The Ontario human rights legislation, however, must be sufficiently strong to ensure that it is impossible under the law to impose a second discriminatory sentence on offenders in any area of their lives, whether it be employment or housing or membership in an association or access to services. The bill, as it stands, allows and, indeed, condones this discrimination.

The Elizabeth Fry Society would urge the committee to seriously consider a question which has been posed by the Church Council on Justice and Corrections, and I have brought you a little gift today. The question is: Why let our prejudice inflict a second sentence on former inmates? We would urge you to amend the bill in the ways which we have suggested.

We have enough posters so that each of you may put one on your office walls and ask yourself this question as you are considering amendments to the bill. I would be happy to answer any questions you might have.

Mr. Stokes: Gill, last night we had a presentation put before us by the Retail Council of Canada, dealing specifically with the issue you are addressing yourself to.

In part of their brief they say: "We would hope that the exception to the general rule established in section 4, which is outlined in section 21(6)(b), would permit a retail employer to decline to hire a job applicant who had a record of theft or other

related forms of dishonesty for a job where likely trustworthiness is a bona fide job qualification. The employee's past history is often the only available indicator of this quality.

"In this connection, we would suggest that it may be useful to clarify by means of regulation or otherwise that a record of offences which reflects directly on an employee's honesty is a relevant consideration when selection is being made for filling a position requiring trustworthiness."

I take it you would disagree with that position?

Ms. Sandeman: Partially. I would agree with the retail council that its members should, as far as possible, be protected from hiring inappropriate employees through ignorance of the facts. I think section 22 speaks to the need to always have a personal interview. During that interview I believe the prospective employer and employee should be able to discuss the trustworthiness or otherwise of the employee. There probably should be some guidelines, perhaps of the kind I have suggested, for such an interview.

I think what the retail council is suggesting might be a little too rigid in that it does not take into account the notion of time lapse.

For instance, somebody who, when he was 17, ripped off a store where he was an employee, where he had a job after school in a milk store or something, was an unreliable, dishonest, untrustworthy employee at that point, and he will have a record for theft under \$200 or whatever it is. If he is applying for a job at the age of 27, with 10 crime-free years in between and a good job history and more education and so on, for a job at that stage, I would hope that the employer would feel free to consider the time, the record of the person since that time, and not be able to say, as I think the council is suggesting, that once you have proved yourself untrustworthy you are untrustworthy for life.

The important thing is to ensure that there is an interview at which all of these things can be explored so that both sides are protected.

Mr. Stokes: That brings up another point then. In another part of their brief they suggest that the new legislation not contain a requirement that they be obliged to interview everyone who makes application for the job, because they have members from Eaton's and Simpson's and Canadian Tire, large corporations with quite a large work force. If there were 700 applicants for a job, do you think it realistic that everybody be given the right of an interview?

Ms. Sandeman: I think it realistic that everyone be given the protection of not being turned down for that job because an employer has asked him if he has a record of offences, to which he has answered yes, and then he was immediately put on the discard pile without a chance to explain, to enlarge on the situation and so on.

The problem at the moment is that in a tight job situation, where some company like Simpson's gets 600 applications for a job, I know that an employer would naturally look for ways to weed the pile down. If you have a handy little thing that says "criminal record," out that one goes.

Sure, it is going to be easier for Simpson's, but, on the other hand, it is not then easier for the prospective employee to get a fair hearing on the job market, and what we are talking about is equal accessibility to the job market without unfair discrimination. Somehow one has to find a balance between Simpson's not having to interview 700 people but also not being allowed to use as one of its grounds for denying either the interview or the job the fact that the applicant has a criminal record.

Mr. Stokes: A final question, and it is not about your brief at all: We had the Ontario Advisory Council on the Status of Women, I believe it was, in an earlier presentation suggesting that the Ministry of Labour was not an appropriate vehicle through which the commission should report to the assembly; that it should report directly to the assembly, which means that it would be placed in the hands of the Speaker who would table it in the House, and that would probably be the end of it. The person who preceded you suggested that perhaps the Ministry of the Solicitor General would be the appropriate ministry to report on the activities of the commission before the assembly.

Since the Elizabeth Fry Society is probably more familiar with the activities of the Solicitor General than anybody who will make a presentation to us, do you think that is an appropriate vehicle?

11:40 a.m.

Ms. Sandeman: I have to speak personally because the society has not given thought to this point, but I think it is almost impossible to find an appropriate ministry because human rights cut across the mandate of all ministries, I think it would be fair to say.

What is more important, I think, is that the bill contain the kind of procedures for the commission and protection for the community that we want it to contain; and, secondly, that, whatever ministry the bill comes under, all of the staff and people connected with the commission be of the highest possible calibre.

I can see people making a good argument that this should be under the Ministry of Education or Health or whatever because there are so many possible ramifications to it. I would not get too held up with which ministry it should be under, but more with the quality of the legislation and the quality of the enforcement of the legislation.

Mr. Eakins: I am pleased to see you here today, Gill, as a former neighbour in a neighbouring riding and as one who served well in the Legislature. We appreciate the work you are doing here.

I was also very much interested in the paragraph in the retail council's brief that Mr. Stokes referred to and I thought some of the comments in that paragraph with regard to those with records were rather presumptuous.

Do you have any statistics or research to show that young people with records who have had some problems in the past are less trustworthy after a few years than those who are working in a retail business today? They refer to the trustworthiness of people generally. I would just like to compare what is happening today in regard to the loss of funds in retail businesses--compare those without records to those who have records. Do you have any means of comparing them?

Ms. Sandeman: No, I do not. I would suggest, though, that there is a natural growing-up process. Most of the criminal activity in Ontario is committed by people between the ages of 16 and 24, and then it tapers off very fast after that. A lot of people who commit offences as youths do not commit more offences.

There is really no predictability factor there, so that if you have somebody who, when he was 20, was untrustworthy you can say that he is not going to be trustworthy by the time he is 30. The contrary seems to be the case: a lot of people make errors, or more than errors, at an early age and then grow out of it.

Mr. Eakins: Especially in the retail business. You suggest that these problems are among young people under the age of 20 who have been involved in the retail business.

Ms. Sandeman: There is no way of knowing. I know there is an enormous--what's the term?--shrinkage in the retail business. Probably about six per cent of the total cost of inventory is written off as shrinkage, which means employee theft. I do not think anybody has done a study to show whether that is by regular, trustworthy employees who have never had a record or whether it is because employers have gone out and hired people with records and they are stealing from the employer. I suspect it is the former.

The notion of writing off six per cent of your costs or whatever it is as shrinkage due to employee theft suggests that most of it is never tracked down, that things are walking off shelves and out of stockrooms, and that the employer, at this stage, with business being done in the volume it is, takes that as part of doing business.

Therefore, it is really unfair to single out those people who have already been punished for an offence and punish them a second time because they may cause some shrinkage in your stock, when you know it is happening anyway, even if you have a perfectly record-free employee group.

I would love to see the retail council do some comparisons in rates of stock shrinkage between employee groups where there is no one with a record and those which have somebody with a record. I do not think there is any statistical evidence at all.

Mr. Eakins: That was the main interest I had.

Mr. Riddell: A response to a question I asked one of the delegations last night was that when you give rights to one group of people, you are taking rights away from others. I think you will admit that there will be quite a change in the decision-making process on the part of employers, landlords and what not when this bill goes through.

What obligation do you feel a landlord would have to his tenants if he were considering an application by a person with a criminal record for a vacant apartment in that building? If you feel that person is obliged to level with tenants, who may have been there for some years, and indicate to them that he is going to be renting an apartment to this person, and if these tenants say, "If that is the case, we will be moving out," what alternative then does the landlord have? Does he consider the tenants who have been with him for a period of time, or does he say, "I am going to come up before the Ontario Human Rights Commission if I do not rent this apartment, so maybe to avoid that I will have to let my other tenants go"?

What I am getting at is that we are giving rights to some people but, on the other hand, we are taking rights away from others. In this particular example--I do not know whether it is exaggerated or not--we are taking rights away from those tenants who have been there for a while and they are saying, "Fine, if you make that decision, we move out."

Ms. Sandeman: What you have just said, Mr. Riddell, illustrates the kind of prejudice that is the reason this bill needs amending.

Your remarks do not take into account the fact that, for instance, today in Ontario there are 40,000 people on probation; in other words, they have active criminal records, they are still under the sanction of the court. It does not appear to me that their landlords are terribly upset about renting to them. You may have some as your neighbours, if you live in an apartment building. The notion of living next to an offender should not frighten us. There are hundreds of thousands of people in Canada who have a record of offences and the group "offenders" is no different, generally speaking, than the group "the community at large."

The problem arises when a specific person, with the kind of prejudice that you have just described, decides to exercise that fear and prejudice against an individual and feels that just because there is a record of offence he cannot rent to this person. That seems to me to be an absolutely untenable ground of discrimination.

We have protection from actual offences occurring, in that if there is somebody vandalizing your apartment building you call the cops. You cannot necessarily assume that somebody who has committed an offence in the past and has been punished for it is going to commit that offence again, but there could well be some inquiries into that.

It is absolutely appalling that anyone would assume that because somebody with an offence is moving into the building the landlord would want to tell all of the tenants. It seems to me that when the requirements of the court are imposed, it is up to the individual to meet those requirements. It is not up to society to say: "You are obviously no good because the courts have said you are no good. Therefore, we are going to say you cannot live in this building." As I said before, it is a second punishment. It does not seem to me that one would want to advertise that.

11:50 a.m.

If you, for instance, transpose your remarks to the notion of racial prejudice on the part of a landlord, a landlord who says: "I am going to take the first person from a visible minority into my apartment building, and then all of the other people in the building are going to see this and they are going to move out. How am I going to protect their rights?"--I do not think you would accept that.

What I am trying to suggest to you is that you think of offenders in the same way. Unless a person from a visible minority is breaking the Landlord and Tenant Act, he should be free to enjoy that apartment, just an ex-offender should be free to enjoy that apartment, unless he is breaking the Landlord and Tenant Act or committing a criminal offence or vandalizing the elevator or whatever it may be.

Mr. R. F. Johnston: Jack, do you not want to know whether or not you are living next to Harold Ballard or Clarence Campbell or Senator Giguère or Jack Davis?

Interjection: Yes, they are a dangerous crew.

Mr. Riddell: No, I would agree with you, but I also know that some of the tenants would discover over a period of time that they had this person sharing the building with them, and I can see them going to the landlord and saying, "We feel that you had every right to inform us."

I do not know whether that is the case or not, but I do know that I have businessmen who are talking to me and saying: "What in the hell are you people doing to us? If you are going to continue to make the decisions for us and take our decision-making away from us, then why don't you buy our businesses and we will go and serve in your position in politics?"

This is the type of thing I am getting. Employers no longer feel they have a decision left as to who they can hire, who they can fire and who they can keep. "You have to put yourself in our position." That is the type of thing that we are getting.

I tell you, there are a lot of businessmen who are pretty upset with all the red tape they have to go through now, all the paperwork and what not the governments require of them, and now they are saying, "We are not in a position now where we can make a decision as to who we can hire and who we can fire, or we are going to be up before the Ontario Human Rights Commission." I am giving you the other side of it. It is not that I particularly agree with them, but this is the type of thing we are faced with--and it is the same with landlords.

Ms. Sandeman: I hope that if I were in your position I would say to such a businessman: "You have every right, and the Legislature should not interfere with that right, to hire people according to their ability to do the job which you are advertising or which you want to fill. You do not have the right, however--and as a member of the Ontario Legislature, with the duty and obligation to protect human rights in this community, I will tell you that you do not have the right--to turn down for that job a person just because he or she is Senegalese, a native Indian, a woman, blind, has a record of offences, belongs to a certain religious group or whatever it may be. In most occasions that is not relevant, and if it seems to you to be relevant, Mr. Businessman, may I suggest that you are discriminating unfairly against certain people."

Mr. Chairman: We are a little short of time. Mr. Lane, do you have a question?

Mr. Lane: Yes, just a very short question, Mr. Chairman.

I see on the first page of the presentation that you are talking about restitution orders. I have always been concerned that the courts seem to be pretty able to hand out fines and death sentences, but they were not too concerned about the guy who had had his house burglarized or who had lost a lot of money in one way or another or who, in some way or another, had a loss--let us put it that way. So the guy serves his term to society by paying a fine or being put into jail or whatever, but the other guy has never been reimbursed. I think reimbursement or restitution should be part of the sentence. I just wonder how your society feels about that.

Ms. Sandeman: In many cases, and increasingly, it is part of the sentence. That is one of the good things that has been happening in the justice system recently: there is very much more sensitivity to the needs of the victim, as well to the needs of society as a whole.

Too often, when it is a property crime we haul the offender into court, we fine him, and the victim sees the fine money, as you are suggesting, going somewhere into that faceless bureaucracy and he is still left with a broken store window and the hassle with the insurance company. More often, an individual on a break-and-enter, which is very traumatic for the victim, feels that he has been entirely ignored.

More and more there is an attempt to bring victim and offender together, either face to face for some kind of reconciliation process, and perhaps some work on the part of the offender for the victim, or by a restitution order from the court. Again, the court collects the money, but the restitution is made directly to the offended party.

That is very helpful and that is how we should be saying to offenders: "We do not like what you did. We want you not to do it again, number one, and to put right what you can, number two." That is how we should deal with offences through the courts.

I do not believe that we deal with offences by saying to an offender, "Sure, we have the courts, we have all of these sanctions, but thou shalt not live in apartment buildings; thou shalt not work for me; thou shalt not join my professional association," and we go on punishing and punishing.

The John Howard Society had a little button which all its members were wearing last year--some of you may have seen it--which said, "There is no such thing as a short prison sentence." The point of that was that the prejudice in the community carries on the effect of the prison sentence, so that in many cases all prison sentences are life sentences.

We would like to suggest to you that if, through the Human Rights Code, you can make a prison sentence last for the term that the courts impose rather than the rest of us being allowed to continue prison sentences and convictions on into life sentences, then you would be doing a very helpful thing.

Mr. Lane: I am glad to hear you say you think the justice system is moving in that direction, because I think in the past too often the victim has been forgotten.

I have always been concerned about how hard it is for an ex-offender to get back into society. I can recall telling many people over the years, "Just because you made a mistake and became a second-class citizen, it does not mean you have to stay one." But it is easier said than done.

I see where you say at the top of page two that there are certain deficiencies in the bill. Then you quote the preamble. You seem to be saying that, as far as ex-offenders are concerned, from there on down it seems to be pretty well downhill. I think you are saying to us that there is not too much in the bill for ex-offenders.

Ms. Sandeman: That is right.

Mr. Lane: That is what you are really saying, are you not?

Ms. Sandeman: Yes. If we are really serious about making each person feel a part of the community and able to contribute fully to the development of society, which seems to be what people

believe rehabilitation is about, we make it very difficult for ex-offenders to contribute if we become very discriminatory about where they can work, where they can live and so on. There is definitely a double standard applied to offenders.

Mr. Lane: Apart from the bill altogether, do you feel that society is somewhat easier on ex-offenders than was the case, say, 25 years ago? That might be too far back for you to remember, but I can remember.

Do you think we are moving the right way there? You say we are moving the right way as far as restitution goes, and I agree with that. Apart from the bill altogether, do you think society and the justice system has been making it easier for ex-offenders in recent years?

Ms. Sandeman: I see two things happening at once. I find that a very difficult question to answer. I think that people are accepting more and more the notion--for instance, with the community service orders Mr. Drea introduced when he was Minister of Correctional Services, there has been an enormous public acceptance of the notion that offenders should repay society in some way or another. People are less willing to say, "Send them all to prison." They like the notion of having repayment.

12 noon

On the other hand, there is, I think, an unfounded sense in society that somehow we are all too soft on criminals. The increasing length of sentences being handed out in Canada and things like that suggest that we are not getting any softer on criminals.

In the work we do, we see on the one hand an increasing group of employers who are, for instance, phoning our offices and saying: "We have some job vacancies. Do you have any among the women with whom you are working who would like to fill them?" In other words, a positive invitation from employers towards a group of people who they know, by definition, are going to have a record of offences.

On the other hand, we see the kind of mindless prejudice that Mr. Riddell was describing of the people who say, "I know there is a record of offence; therefore, this cannot be a good person."

What we would like to do is increase the numbers in the first group and decrease the numbers in the second group. I believe that legislation often can lead the way in public attitudes.

Mr. Lane: That can only go so far. There have to be people out there prepared to help rehabilitate those people and get them back into society.

Ms. Sandeman: We take that to be our daily work. We also take educating the public, including legislators, as part of our work.

Mr. Lane: I have no problem with that. Thank you very much.

Mr. Eakins: Could I just ask one question, Mr. Chairman?

Mr. Chairman: Well, I think we are certainly going to be discriminating against the Ontario Advisory Council on the Physically Handicapped if we do not carry on.

Mr. Eakins: Just a clarification on the poster. I just want to ask if this is the Canadian Council of Churches, which takes in the majority of the denominations.

Ms. Sandeman: Yes, it is. They have--I do not know if "subcommittee" is the right word--a body called the Church Council on Justice and Corrections. Mr. David McCord is the executive director. They produced the excellent kit on alternatives a few years ago and they are becoming reactivated, and this is one of the first signs of their reactivity. Yes, it is all of the major churches.

Mr. Chairman: The Ontario Advisory Council on the Physically Handicapped, Mr. Joseph Arvay.

Mr. Arvay: Mr. Chairman, I am pleased to represent the Ontario Advisory Council on the Physically Handicapped today. For those of you who do not know, the Ontario advisory council is one of three advisory councils which reports to the government through the Provincial Secretary for Social Development, the Honourable Margaret Birch. I believe you have heard from the other two advisory councils in the course of your sittings.

The advisory council is made up of both handicapped and nonhandicapped members. None of the members represents any agency as such. Members are basically selected on the basis of their knowledge and expertise with respect to the needs of the physically handicapped.

First, I would like to take this opportunity to thank this committee for allowing us to appear. I believe we are the last body of individuals to make submissions and I suspect I am going to be repeating, to some extent, things which have already been said time and time again. Indeed, irrespective of the prohibitive ground of discrimination, I am sure many of the individuals making submissions have common interests and common concerns.

I will focus, however, on the concerns of the handicapped in Bill 7. I have provided a brief to the members. I do not know if anybody has had a chance to read it. I do not propose to read it. I would like to speak to the brief, and I am prepared, obviously, to answer any questions that any of the members may have with respect to the brief.

I would like to say as a preface to my remarks that the advisory council is very pleased with Bill 7--pleased with its content and its approach--and our submissions are really directed to some specific provisions which we believe deserve some scrutiny and some criticism. We are hopeful that these remarks will be taken into account in any revisions to the bill.

I have to start off also with somewhat of an apology. I am embarrassed to admit that I myself misinterpreted some sections of the bill, section 9 and section 16. I was concerned with the definition of "handicap." Really, there is none in the bill. There is only a definition of "because of handicap" in the bill, which is in section 9(b).

Section 9(b) incorporates not only whether one is handicapped, but also whether or not someone believes that another person has or had a handicap. I was concerned that the phrase "is believed to have or have had" a handicap may be brought forth and incorporated into section 16.

My concern--and I will go over this very quickly because my concern was not well-founded--is that, although discrimination on the basis of a handicap is prohibited and ought to be prohibited, there are certain situations in which individuals ought to be able to discriminate--and I use that in a neutral sense--on the basis of a handicap. But I think it should be made very clear that discrimination should only occur if a person has a handicap which renders him incapable of performing the essential duties accompanying the rights provided by the bill. In other words, a person should not be able to discriminate only because he believes a person has a handicap; discrimination should be restricted to those situations in which a person does have a handicap.

Handicap itself is not defined in Bill 7. I suppose, when you read section 16, when you see the word "handicap" by itself, as opposed to the phrase "because of handicap," you would turn to section 9(b) and define handicap by looking at section 9(b)(i). In other words, when you are trying to define handicap, you would not read all of section 9(b); you would only read section 9(b)(i).

That was the reason I was originally concerned with section 16. It caused me to be confused. I do not know whether I am more easily confused than other people, but it may be something to consider. There is not a definition of handicap. I would think that for clarification one might like to see a definition for handicap which simply reads like section 9(b)(i); in other words, there would be a definition for "because of handicap" and there would also be a definition of "handicap," and the definition of handicap would just be clause (i).

The second point I would like to address is the question of onus. I do not think there is any doubt that Bill 7 imposes the onus on the handicapped to prove that he or she has been discriminated against because of his or her handicap. Those are the general rules of interpretation with respect to statutes, and there is nothing in Bill 7, in my view, which reverses that onus to place the onus on the person who is accused of discriminating.

The council is concerned about the burden of proof, if you will, or the onus provision in Bill 7. By placing the onus on the handicapped to prove that they have been discriminated against unlawfully, it may be that there will be many situations where they have been discriminated against that will go unremedied, simply because discrimination is a very difficult thing to prove.

One cannot see it. People who discriminate do not usually brag about it. People who discriminate usually try to find other ways to rationalize their decisions or to hide their decisions.

It is our concern that people who have been discriminated against will not be able to prove it. It is our suggestion, therefore, that Bill 7 incorporate a reverse onus situation which basically shifts the onus to the alleged contravener, or alleged discriminator--if I may use that expression--to prove that he did not discriminate.

12:10 p.m.

In order to incorporate a reverse onus situation, one might suggest that the handicapped--and obviously this applies to any minority or any person protected by the bill--would simply have to prove that (a) they have been denied a job, housing, services, goods or whatever, and, (b) they are handicapped. The onus will then shift to the employer or landlord, as the case may be, to prove that the decision to deny a person a job or housing was not based on the fact that this individual was handicapped.

I might suggest a compromise, and I do not have this in the brief. The compromise might be that the handicapped person or the woman or the black or whoever would simply have to adduce some evidence that he or she had been discriminated against. Then the onus would shift to the landlord or to the employer to prove that there has been no discrimination.

In other words, it is a halfway measure between requiring all employers and all landlords to justify every one of their decisions when a handicapped person is involved on the one hand, and the situation you have now where the employer or the alleged contravener simply has to sit back and wait to see whether or not there is sufficient evidence for him or her to answer a charge.

What we are suggesting is that Bill 7 incorporate some type of reversal in its provision, wherein the ultimate onus, the ultimate burden of proof lies on the alleged contravener of the bill and not on the handicapped or other minorities.

There is sort of a reverse onus situation in Bill 7 now. At present, the handicapped individual is required to prove that there has been discrimination and there has been discrimination on the basis of a handicap. Once he proves that he had been denied, for instance, a job because of the handicap, then, in my respectful opinion, the onus shifts to the employer under section 16 to prove--for want of a better word--that he or she denied the handicapped person a job because that handicapped person was incapable of performing the essential duties of the job.

In other words, under section 16 the onus of proving that the handicapped person could not perform the essential duties accompanying the right would lie on the employer or the landlord. That is clear. In case there is any doubt about it, if that is the government's intention I would like to see that intention stated more clearly and more expressly.

It is our position that section 16 does not place the onus on the handicapped. It places the onus on the employer or the landlord, as the case may be. We are simply suggesting: let's go all the way; let's place the onus on the alleged contravener, not only in section 16 but throughout the bill. As long as the handicapped person provides some evidence of discrimination, that should be sufficient.

I should also mention that there is a safeguard built into the bill. I think it is in section 38(1)(b), where the Ontario Human Rights Commission has the ability to screen out frivolous or vexatious complaints and in that way protect employers, landlords or what have you from having to defend themselves against every allegation of discrimination.

We found the provision in section 10 dealing with constructive discrimination very interesting but in need of some improvement. Our concern is that individuals will be able to effectively, albeit not intentionally, discriminate on the basis of a handicap if it is characterized as constructive or indirect discrimination. If it is direct discrimination, it may be that section 16 would outlaw that type of discrimination or provide the handicapped person with a remedy. But section 10 does not provide the same type of rigorous protection that the handicapped require that section 16 does.

I want to make sure I said that correctly. I am not sure I used the section numbers properly. Section 10 does not provide the same type of protection that section 16 does.

An example I provided in the brief is self-service garage stations. In our view, that is an example of constructive discrimination. In other words, you have self-service garage stations imposing a requirement on individuals that if you want gas for your car you have to get out and do it yourself. To many physically handicapped drivers that is an impossible requirement to comply with.

As long as there are still some full-service garage stations in this province, that may not be a serious concern, because the handicapped person can simply go to a full-service station. Our concern, however, is with the proliferation of self-service garage stations in this province and in various municipalities. It may be that at a particular time of the day, or any time of the day in some municipalities, the only place you can go for gas is a self-service garage station.

The requirement that you get your own gas is obviously a reasonable requirement and it is obviously a bona fide requirement. The way section 10 is worded right now, there would be no violation of Bill 7. But in fact the requirement imposed by the service stations that everybody pump his own gas is a form of discrimination, effectively depriving the physically handicapped driver from having gas in his automobile.

We believe very strongly that section 10 should be redrafted so that constructive discrimination is no easier to accomplish

than direct and invidious discrimination. We recognize that intentional discrimination is invidious and should be outlawed and severely penalized, but section 10 seems to say that if you do not intend to discriminate against someone it is not as bad. We agree it is not as bad, but Bill 7 should seek to outlaw not just intentional discrimination. The result Bill 7 should achieve and should seek to achieve is equality between the handicapped population and the nonhandicapped population.

In our view, it does not matter, it is irrelevant, that a person does not intend to discriminate if there has been discrimination. I would go so far as to suggest that most of the discrimination handicapped people have faced in this province and, indeed, in the country is not as a result of intentional discrimination but as a result of thoughtlessness. It is unintentional discrimination, if you will.

There are other examples I could use to point out the weakness of section 10; for instance, a taxicab company which adopts a policy of "carry your own bags and you can ride with us a little more cheaply," or, "at the same rates." This is a reasonable and bona fide requirement for sure, but is it necessary? Is it justifiable?

I am going to be talking about the concept of reasonable accommodation. Maybe this concept could be plugged into section 10. In other words, you allow service stations to impose self-serve requirements and you allow taxicab companies to impose carry-your-own-bag policies, but when it comes to individual cases of the handicapped, these companies are going to have to accommodate the needs of the handicapped as long as the handicapped's needs are not onerous on the taxicab company or on the gas station company, as the case may be. There may have to be an attendant there in case somebody who is handicapped needs gas. The taxicab driver may have to get out of the car and help the person in the wheelchair with his wheelchair or help the person on crutches with his bags.

I am simply suggesting that section 10 be amended either to basically state that even constructive discrimination is outlawed unless there are compelling and necessary reasons, or to incorporate some notion of accommodating the handicapped, notwithstanding the reasonableness of your requirement or criteria.

With respect to the insurance provision, we are concerned in section 20 with the notion that insurance companies can discriminate on the basis of a handicap and, indeed, on the basis of the other prohibited grounds of discrimination where there are "bona fide and reasonable grounds" for doing so.

12:20 p.m.

We believe this violates the very premise and spirit of Bill 7 or the spirit that it ought to have; that is, that one's handicap is, in general, an irrelevant consideration with respect to decision-making in society; that merely because one is handicapped that should not justify any differentiation with

respect to what he or she can do in society. In our view, there is simply no justification to allow insurance companies to discriminate when they come up with simply "reasonable" grounds to do so.

If the government is committed to treating the handicapped as equal members of society, then insurance companies, like every other company and every other individual in this province, should only be able to discriminate where there are very compelling reasons to allow them to do so. To simply say that they can discriminate when there are reasonable grounds to do so, but not necessary grounds to do so, in our view is unjustifiable. It is simply there to appease the insurance companies without any foundation in principle. That is our objection to it. We suggested a rewording of section 20, which I have enclosed in the brief.

We are very pleased with the primacy clause, and our only criticism of it is the fact that the government is given two years to shore up its legislation, to either make it comply with the Human Rights Code or to make it apply notwithstanding the Human Rights Code.

We seriously wonder why that is necessary. Individuals, companies, whatever are not given any two-year grace period to re-evaluate their policies. A policy either violates the code or it does not. In our view, if an act of the Legislature discriminates unlawfully, unjustifiably, against the handicapped or anyone else, then an individual should be able to go to the commission or the courts as the case may be and seek a remedy immediately.

If the courts strike down the act, the Legislature can then go back and revise it if it wants to, or re-enact it in the very same form and have it operate notwithstanding the Human Rights Code. In our view there is no good reason to allow the government this two-year grace period to look over its legislation.

My final comments deal with the concept of reasonable accommodation. In our view, it would be the most important, and I would go so far as to say, the most necessary revision to Bill 7 as it now stands, that there be incorporated into Bill 7 some notion of reasonable accommodation.

I understand that the coalition--I am not going to remember the name properly, and I apologize to them--the coalition of handicapped groups in Ontario--appeared here, and spoke at length on the concept of reasonable accommodation, and I will not belabour the point, except to say that in our view it does not now exist in the code. It is almost there, but it is not there in the clear terms that it ought to be.

Section 38 allows the board of inquiry to require an employer or a landlord to basically make some sort of reasonable accommodations to an employee in order for that employee to handle the job, whether it is to put in a little ramp or to change some equipment or whatever. But section 38 does not allow the board of inquiry to do that until it first finds that there has been a violation of Bill 7 or the Human Rights Code.

In other words, the example in my brief is that, if in a stationery store there is a small step dividing the store in half, and a person is applying for a job as a clerk and that person is in a wheelchair, that one small step will render that person incapable of performing the essential duties of that job. The employer could quite justifiably, under this bill, say, "I am not going to hire you," and nothing could be done about it.

Section 38 would not help, because there has been no violation of the bill. Section 38 would only come into play if the employer said, "I am not hiring you simply because of the step; I am not hiring you because I do not like handicapped people," or something to that effect, which is not going to be the case.

We are saying that section 38 and section 16 should be amended so that discrimination is outlawed where the employer or landlord or the provider of goods or services could make some sort of reasonable adjustment to accommodate the handicapped individual. In other words, in my example, that employer, under my proposal, would be guilty of discriminating, because it would have been very easy and cost very little for him to put in a ramp to even off that store so the person could perform the essential duties of his job.

What will be reasonable, of course, will depend on the circumstances. Section 38 contemplates that question by requiring the board of inquiry to look into the costs involved, and whether the cost of renovating a place or making the necessary alterations to equipment would be cause undue hardship to the individual concerned.

I do not think the board will have any difficulty with the concept of reasonableness in that context. In our view, it would be the most important amendment to this bill, to incorporate the concept of reasonable accommodation. Again, this goes back to our concern that probably the single most important reason the handicapped find themselves in a position of disadvantage in this community, in this society, is the fact of physical and architectural barriers.

We appreciate the fact that the government does not intend to transform the Ontario Human Rights Code into a building code, but the building code only applies to future buildings; it does not require employers to retro-fit their premises. It is because of these architectural and physical barriers that the handicapped individual has been unable to get employment and housing, unable to enjoy recreational and cultural facilities and exercise his basic rights in the community. We believe very much that it is these physical barriers that disable many individuals and that but for these physical barriers many of us would not be disabled. We would be able to do the very same things that the able-bodied population does.

We think it is very important, very critical, for the government to incorporate the concept of reasonable accommodation in Bill 7. If you do that, you will have a very progressive piece of legislation indeed, and one that we will certainly be very proud of.

Those are my submissions.

The Acting Chairman (Mr. Lane): Thank you very much, Mr. Arvay. Mr. Johnston, you had a question?

Mr. R. F. Johnston: I presume that, as you were saying in summing up, reasonable accommodation is the most serious element as far as you are concerned, your priority.

Mr. Arvay: Yes.

Mr. R. F. Johnston: The place to insert wording of that nature, though--I am a little confused as to whether or not you think it can be handled by putting it under section 16 rather than under section 38, or whether it has to be mentioned in sections 10, 16 and 38. Could you just clarify that?

Mr. Arvay: I think it would have to go into both sections 10 and 16, because those sections sort of run parallel courses, dealing with two different types of situations.

I think it should be put into section 16, basically prohibiting discrimination where no reasonable accommodation can be made. That is where it should go; and it should also be incorporated into section 10. I did not provide the committee with any suggested rewordings of these provisions. I will leave that to your draftsman. But that is where I think it should go.

Mr. R. F. Johnston: I am a little surprised by the position you have taken on insurance. Our position in the NDP caucus is that the section which allows discrimination in insurance contracts and that kind of thing should be deleted, not just in terms of the disabled, but for women, the aged and so on.

Why is it that you decided to go the partial way instead of the full way? Did you have specific ideas in terms of the kinds of handicap which might be legitimate things for consideration?

Our view is that any decision to make a change, in terms of having one group discriminated against in insurance contracts, would necessarily be arbitrary, and, therefore, we would rather not see it in.

Mr. Arvay: I guess our position is that where an individual can justify discrimination--and I use the phrase "discriminating against" in a very neutral sense, the way it is defined in the bill--on the basis of handicap, then that is okay, because there may be situations where the discrimination is really quite proper.

12:30 p.m.

If Bell Canada refused to hire me because I wanted to be a lineman and climb up and down the poles, I think they should be able to do that.

With respect to insurance companies, I must say I am very sceptical of the suggestion that the insurance companies will ever be able to come up with valid reasons for discriminating, because, at the present time, I do not believe there are any empirical data to support their position that because one is, for instance, a paraplegic, one is now in category F rather than category A and has to pay five times the rate for life insurance or disability insurance that the so-called able-bodied person who smokes a pack of cigarettes a day has to pay.

My position is that, once Bill 7 is put into place, insurance companies should have imposed upon them a very rigorous requirement of proving that the increase in rate or their denial of insurance in any particular case is very justifiable, very necessary, and not based on unfounded information or prejudice, which is the case right now.

If an insurance company can show that an individual, because of his disability, has a life span which is a couple of weeks, and that person wants to apply for insurance, then we believe the insurance company is justified in increasing that individual's rates. What we are saying is that the insurance company should be put to a very strict test to prove that and not simply say, "Well, everybody knows that a person with a heart condition is going to die before a person without a heart condition." That may not be true.

We are simply saying to the government, make the insurance companies justify their actions in a very rigorous way and not just by some wishy-washy formula of bona fide or reasonable grounds.

Mr. R. F. Johnston: My suggestion is that we should just omit it and then allow it to be worked out through--

Mr. Arvay: It is very possible that if it were omitted it would just simply be reintroduced through section 16, and that would be fine.

Mr. R. F. Johnston: That puts a greater onus on the insurance companies than what we have here.

Mr. Arvay: Yes, and that would be fine. It would be basically the same thing.

Mr. R. F. Johnston: I have just one other thing, because I realize that we are out of time. I do not know that there are any particular comments in your presentation about affirmative action, or about the powers of the Ontario Human Rights Commission in affirmative action.

Mr. Arvay: I did not incorporate any because, as the bill now stands, I am fairly content with the affirmative action provisions.

Mr. R. F. Johnston: You are pleased with the recommendation?

Mr. Arvay: I think so.

Mr. Boudria: Mr. Chairman, I have a question on section 20 as well. I have looked at the bill a few times before and there is one situation which has arisen in the past and which I remember was reported by the media, and I wonder if this clause would still permit this situation to happen.

This is the case where, for instance, a night club or a public establishment could tell you or any other customer, "I am sorry, you cannot come to this bar because it is on the thirty-third floor and our insurance company says we cannot have wheelchairs in this place because they could potentially be dangerous if we had to evacuate in the case of a fire."

This insurance clause covers accident insurance and things like this, and I am just wondering what your feeling is--and if the parliamentary assistant is still here, I would like to get his feelings--about how that would apply in such a case. There is a history of that having happened in my area relatively recently.

Mr. Arvay: I question whether section 20 would be relevant. It may be, because here you are dealing with a person saying to an individual in a wheelchair who is trying to get up to the bar, "You cannot come in because our insurance company said that if we let you in we are not going to be covered."

Mr. Boudria: That is right. If the insurance company said that, if the insurance company had that as a matter of policy--I am not speaking now of the bar owner or the establishment owner who might have that as his policy or might make up that kind of argument, but if that was the case, that an insurance company did not wish to insure bars that let in people in wheelchairs, the end result would, of course, be discrimination.

I think there is a loophole in that clause that would actually permit this to happen, in both cases, in the clause as it stands and also in the way you rewrote it in your submission. Would it not?

Mr. Arvay: That is a nice point and one that, quite frankly, I had not thought of. It may now allow a person to discriminate on the basis of simply reasonable grounds which, had section 20 not been in there, would have been outlawed by section 16. In other words, the insurance company can make the case that that term in its contract of employment with the owner of the bar is a reasonable one, and the owner of the bar can turn around and say to the handicapped person, "I personally do not have anything against you, but my insurance company does, and you cannot come in."

If you were testing the bar owner's actions under section 16, he would probably be in violation of the act, but if the bar owner could simply point to section 20, his actions might be justifiable.

That, again, is why we are so critical of the phrase "bona fide and reasonable grounds." The philosophy of the act should be no discrimination on the basis of handicap unless there are real and compelling reasons to allow it. That, in our view, is the principle incorporated in section 26, but that principle is violated in section 10 and section 20.

Mr. Stokes: Very briefly, Mr. Chairman: Everybody whom we have had before us has had some difficulty defining what is reasonable and unreasonable. You talk about constructive discrimination and reasonable accommodation between employer and employee, landlord and tenant. Rather than getting into that, let me ask you a specific question--if you are prepared to answer it--and that is with regard to access of the handicapped to this building.

I am sure you did not have any difficulty getting in here this morning. Have you had any complaints or have you noticed the great difficulty that those who are confined to a wheelchair have in, say, getting up to the second level of this building or into the gallery? Do you think the efforts we have made in providing reasonable accommodation for the public in this building are reasonable, or do you think we are lacking?

Mr. Arvay: I must confess a certain amount of ignorance with respect to what you have done to this building. I came in through the service entrance, the back door, and that is not unusual in the sense that--

Mr. Stokes: Is it reasonable accommodation?

Mr. Arvay: Is it reasonable accommodation for the government of Ontario? Absolutely not. For some employers, perhaps. I should be entitled to walk in the front door just like you.

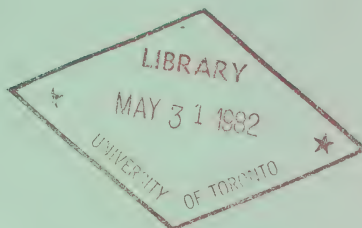
The Acting Chairman: Thank you, Mr. Arvay, for appearing before us. You have done an excellent job of presenting your thoughts to us. Thank you again.

The committee adjourned at 12:38 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

THE HUMAN RIGHTS CODE

THURSDAY, JUNE 18, 1981

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Harris, M. D. (Nipissing PC)
VICE-CHAIRMAN: Stevenson, K. R. (Durham-York PC)
Eakins, J. F. (Victoria-Haliburton L)
Eaton, R. G. (Middlesex PC)
Havrot, E. M. (Timiskaming PC)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Kerrio, V. G. (Niagara Falls L)
Lane, J. G. (Algoma-Manitoulin PC)
Laughren, F. (Nickel Belt NDP)
McNeil, R. K. (Elgin PC)
Riddell, J. K. (Huron-Middlesex L)
Stokes, J. E. (Lake Nipigon NDP)

✓ Substitution:

Copps, S. M. (Hamilton Centre L) for Mr. Kerrio

✓ Also taking part:

Johnston, R. F. (Scarborough West NDP)
Sweeney, J. (Kitchener-Wilmot L)

Clerk: Richardson, A.

Assistant to Clerk: Van Bommel, D.

✓ From the Ministry of Labour:

Elgie, Hon. R. G., Minister

Witnesses:

✓ Brown, C., Private Citizen
✓ Gostick, R., National Director, Canadian League of Rights
✓ Toming, U. A., Private Citizen

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, June 18, 1981

The committee met at 8:08 p.m. in room No. 228.

THE HUMAN RIGHTS CODE
(continued)

Resuming consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario.

Mr. Chairman: I call the meeting to order. On Tuesday night we approved the schedule for the hearings and sittings when the House is likely to be in recess. I indicated on Tuesday night that we ought to approve a budget tonight to forward to the Board of Internal Economy. That will go next Monday at four o'clock. I have asked the clerk to circulate a proposed budget to you. If that is acceptable, I guess we need a resolution.

Mr. Stokes moved, seconded by Mr. Eakins, that a budget be submitted in the amount mentioned.

Motion agreed to.

Mr. Chairman: We have one group and two individuals before us this evening. You will recall that we had not previously scheduled June 18 and had left it open. These three presentations are those carried over from last Thursday night. For your information, we have scheduled hearings tentatively for Tuesday evening, Wednesday morning, and Thursday evening next week. The witnesses are aware that it is a tentative arrangement. I have no indication so far and the clerk and I are proceeding on the basis that we will be here and following that schedule.

Mr. J. M. Johnson: Mr. Chairman, it is my understanding that if the House was in session we were going to meet Tuesday, Wednesday and Thursday, so could you not firm up the commitments to the people?

Mr. Chairman: Do we have your assurance, Mr. Johnson, that the House will be sitting?

Mr. J. M. Johnson: We will hear one way or another if the committee agrees to sit for those three days.

Mr. Eakins: I think we should firm up the days, if that would be acceptable. At least we would know what the schedule is, whether the House sits or not. I think it would be a good plan to use those dates.

Mr. Chairman: We have indicated Tuesday evening, Wednesday morning and Thursday evening, and the witnesses are scheduled to come on unless we notify them otherwise.

Mr. J. M. Johnson: I think the dates will be firm.

Mr. Chairman: Then, after Thursday, we will recess until September 8, whether the House is sitting or not.

The first group tonight is the Canadian League of Rights, Ron Gostick, the national director.

Mr. Gostick: Mr. Chairman, I have a few copies of the brief if I may submit them. Would you have another copy of Bill 7 that I could have before I leave?

Mr. Chairman: I think we can arrange for one, yes. Would you like it now?

Mr. Gostick: I do have one that is marked up, but I would like a new one if I could get it.

First, I would like to thank the members of the committee for this opportunity to appear before it and to present a brief on behalf of the Canadian League of Rights. The Canadian League of Rights is a nonparty association of Canadians dedicated to upholding our constitutional form of government and preserving our heritage of freedom.

While I do not claim any legal expertise on the question of human rights, as one intensely interested in the question of justice and the preservation of human dignity and freedom, I feel constrained to present a few observations and raise a few questions respecting Bill 7, An Act to revise and extend Protection of Human Rights in Ontario. Following, in the order of the bill, are my questions and observations.

In part I, on page one, section 1, we read that "Every person has a right to equal treatment in the enjoyment of services, goods and facilities without discrimination..." What precisely does this mean? Could it imply a right to an equal claim on goods and services? Is this wording not rather indefinite and open to various interpretations?

Then, on page two, still part I, section 4(1), "Every person has a right to equal treatment in employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, record of offences, marital status, family or handicap."

Surely a person's record must be considered by any prudent employer. Most of us would hesitate to hire a convicted thief to guard our valuables or a convicted child molester as custodian of our children. This subsection seems to exude idealism and benevolence, but perhaps is divorced a bit from reality. Also, section 4(2) could conceivably lead to an infringement of freedom of speech for nearly all concerned, whether employer or employee.

On page four, part II, section 12, we read that "A right under part I is infringed where any matter, statement or symbol is disseminated that indicates an intention to infringe the right or that advocates or incites the infringement of the right." In view

of the definition of "disseminate" in section 9, this could include private conversations, correspondence, even phone calls. Even a well-meaning observation that someone's lifestyle is considered less than acceptable to another's moral or religious light might indeed be considered as vexatious or annoying. The opportunities for bureaucratic snooping inherent in this section seem legion.

Page eight, section 23(3) says: "Where an infringement of a right under section 4 is found by a board of inquiry upon a complaint..." You committee members are probably more familiar with this than I am, and I do not intend to hold you up by reading that bill. But the last part of this subsection would seem to give a board the power to impose a life sentence, something rarely imposed even by our courts today. This seems rather incongruous in a bill meant to encourage a better community spirit and individual and group relationships.

Part III, page nine, section 26(a): The commission's function is stated to be "to forward the policy that every person is equal in dignity and worth..." The question comes up, are murderers, rapists and veritable saints equal in dignity and worth? Or is this, again, a bit of idealism but without much foundation in reality?

Page 10, section 26(f): I submit that this subsection, "to inquire into incidents of and conditions leading or tending to lead to tension or conflict based upon identification by a prohibited ground..." is so loosely worded that it might conceivably be used to prohibit meetings, ban publications or otherwise suppress legitimate groups which might offend the political establishment. There seems to be a lot of room for abuse of bureaucratic power in this subsection.

Page 10, part III, section 27: This section might well be used to prevent a wronged or aggrieved person from taking civil action for redress against someone who had brought unfounded or false charges. This is where no person of the commission is required to testify and so forth.

8:20 p.m.

Page 11, section 30(3a): This subsection gives government bureaucrats the power to raid a person's business and seize his property without a warrant and without the victim at that point having even legal counsel. This is a totalitarian power which even the police do not possess.

Page 14, part IV, section 38(1)(a): I am not going to read all these sections. You either have the bill before you or you are very familiar with it. This subsection might conceivably cost a person his business and livelihood. This is the section that deals with people who are crippled or incapacitated and the employer being responsible for adjustments to his buildings and even to his equipment in some cases. Together with subsection (b), this could cause a person to become a victim of economic charges and costs unforeseen and of bankruptcy proportions. Surely this is an infringement of one's right to work and conduct business and enterprise.

Subsections 2 and 3 seem to open up the possibility of a Pandora's box of expenses and costs, possibly far beyond the means of the victim to handle. This could lead to a vast bureaucratic meddling in and infringement upon the rights and freedom of people in business.

Page 15, section 38(4): This subsection brings to mind the thought police in totalitarian states. Under this subsection, it is conceivable that landlords and supervisors could become agents of the thought police. In the case of tenants, both they and their landlords could be penalized by each other, perhaps on the basis of personal grudges, dislikes and so on.

The last section I wish to comment upon is section 39(1) on page 16. This provision for appeal against the board's decision to the Supreme Court is rather meaningless if the expense and inconvenience are prohibitive. Justice does not seem guaranteed here.

In conclusion, I invite you to recall that 17 years ago the then Attorney General, Fred Cass, introduced Bill 99, which became known as the infamous police state bill. There was such a public uproar over this bill to extend police powers that a few days later the Premier accepted the Attorney General's resignation. But the threat to civil liberties is no less dangerous if cloaked in the garb of a human rights board than if it wears a police uniform. If alleged grievances are to be addressed by infringing upon the basic rights or freedoms of others, then in the long run we are all losers.

After perusing this bill, I am left with the impressijon that to its authors a complaint of discrimination is more serious than an offence under the Criminal Code. It seems to me this type of human rights legislation attempts to counter discrimination by instituting a system of state-run reverse discrimination--in this case, going so far as to make one person responsible for another person's actions.

It has been suggested that this type of human rights legislation is unenforceable without police-state powers. If this be so, then I submit we are better off without the legislation. After all, British common law and our Criminal Code have made this land of ours the envy of the oppressed people around the world. Let us keep it that way.

Mr. Chairman: Thank you very much. Mr. Sweeney, a question?

Mr. Sweeney: Yes, Mr. Chairman. There are two or three statements, Mr. Gostick, where you draw conclusions, and I am not sure how you get to those conclusions. May I ask you to clarify them just a little bit for me, please?

Mr. Gostick: Yes.

Mr. Sweeney: I would say in advance I am not trying to quarrel with your conclusions; I just want to know how you got to them from what is in the bill.

On the first page of your statement, under section 4(2), you say that subsection 2 "could conceivably lead to an infringement of freedom of speech." I am not quite sure how you get to that. Could you expand on that, please? It is on page two of the bill. It says: "Every person who is an employee has the right to freedom from harassment...."

Mr. Gostick: What I am suggesting is that what might be considered harassment by one person might be some well-meaning remark by another person. It opens up a great opportunity for government bureaucrats or officials to be making decisions on the given and take between employees and between employees and employer. It opens up the way for a great deal of problems in that area.

Mr. Sweeney: Mr. Gostick, I raised the question because in earlier sittings of this committee it has been generally agreed that harassment would mean repeated verbal abuse, as opposed to a single statement at one point in time, literally never to be repeated. It is in that sense I am having some difficulty seeing how you would call that a limit to freedom of speech. If one person is verbally abusing another person to the point where it becomes harassment--it is not just a single statement--then surely that itself is an abuse of freedom of speech. If you see it in a different way to what I do, I would appreciate hearing it.

Mr. Gostick: As a small business employer myself, I think I would be in a position to deal with that without any help from the government. If I had an employee who abused another employee consistently, I would very quickly dispense with the services of the one abusing the other one.

8:30 p.m.

Mr. Sweeney: There are other sections in this bill which precisely say that should be the role of an employer, and we will come to them later, and you seem to say that should not be there.

Mr. Gostick: I do not think that we need to bring in the government or any government board on that question.

Mr. Sweeney: But the point of the legislation is to simply say this is the kind of thing that shall not be tolerated in our society. Whether he be a landlord, as far as accommodation is concerned, or an employer, as far as the work place is concerned, that is the first line of defence. That person has a responsibility, in whatever way he or she can, to attempt to prevent that. If the landlord or the employer either is not able to or chooses not to do it, then there has to be a second level of defence for a person who is so abused or so harassed. I gather you do not see it that way.

Mr. Gostick: Yes. I can see what you are driving at, but I think you would end up with a totalitarian state with all our actions regulated by government codes, government regulations and government enforcers. This is the type of thing I am sure they had in Nazi Germany or in the Soviet Union. But my concept of a

decent, organic society--and I think ours has been one--is where most people are functioning on the basis of decency, common law and some spiritual values. To my mind, that is far preferable to building up something such as we have here which, it seems to me, will need police powers to enforce. I cannot see it working without that. I cannot see that we should give greater power to a government board than we do to the law enforcement officers. This is the thin edge of the wedge moving towards a totalitarian society. I see a great danger here.

Mr. Sweeney: Mr. Gostick, when we come to other parts of your statement I think you will find there are a number of members on this committee who have some grave reservations about the enforcement powers in this legislation. I do not want to disagree with you on that.

What I was trying to get at in the first place was to be sure I understood what you are saying. I would certainly agree with you on the kind of ideal, traditional society you speak of. The natural actions of the citizens would be such that perhaps we would not need this. Unfortunately, there are sufficient incidents in our society today--and I do not think either one of us has time to go into all the reasons why there has been in our society, and not always for the better--where people now need certain protections they may not have needed in the past. That is not necessarily a correct statement. It may have been necessary in the past; we just did not realize it. But it is certainly a known fact now.

The difficulty is that if people were to act in the religious dimension way that you are suggesting to us, we would not need it. But what do we do when people are abused and harassed and there is not this natural, religious dimension attitude to them? There is nobody around to protect them. Do we simply sit back and say, "We wish society would behave better. It is too bad that it did not, but no one is going to intervene."

It is much like the situation of people who are assaulted on our streets and someone says, "It is not my business to intervene. We have police to do that." Naturally, if every citizen were to do his job or her job, as the case may be, we would not need that. But it does not work that way.

Mr. Gostick: This is exactly it. What I am getting at is that it would not help one bit to pass another law and another bill saying that every citizen has the responsibility to help the policemen on the street. That is something that has to come out of here.

Mr. Sweeney: But if it does not, what do we do then?

Mr. Gostick: You cannot correct it with law. You had better go back and start with the youngsters and their questions of moral principles, spiritual values and so on. You cannot correct that by law, but I appreciate your point very well.

Mr. Sweeney: I understand what you are saying. Let me go on to another one.

On page eight of the bill, and at the top of page two of your brief, you refer to section 23(3) and you use the statement, "The last part of this section would seem to give to a board the power to impose a life sentence." I have underlined the words, "a life sentence" because, again, I am not really sure how you arrive at that.

Mr. Gostick: Let me see. It is a week ago since I prepared this. I was in here last week.

Section 23(3) reads: "Where an infringement of a right under section 4 is found by a board of inquiry upon a complaint and constitutes a breach of a condition under this section, the breach of condition is sufficient grounds for cancellation of the contract, grant, contribution, loan or guarantee and refusal to enter into any further contract with or make any further grant, contribution, loan or guarantee to the same person."

In other words, if someone is found to have contravened the regulations of this act, it would seem from this subsection that the government action against the individual or the organization is almost a life sentence because they are out in the cold from then on.

Mr. Sweeney: Provided they continue to contravene the act.

Mr. Gostick: Is that what it means? That is what I am getting at.

Mr. Sweeney: That is my interpretation.

Mr. Gostick: Does it mean that?

Mr. Sweeney: Yes.

Mr. Gostick: Should that be spelled out? Every one of us can make a mistake or do something wrong, and we might change. What I am suggesting is that the possibility of a life sentence is far too severe and is far too much power to have in the hands of any board or official. I do not think it spells out here that it is only as long as an offence is being committed. That is what I had in mind.

Mr. Sweeney: I see your point. The intent of the legislation is to refuse to enter into any further contracts as long as that particular business or firm continues to contravene the act. That is the intent. But your point is, since it is not specifically said, it could be used in another way. That is the point you are making.

Mr. Gostick: It could be, yes.

Mr. Sweeney: That is a legitimate interpretation.

Let me move on to page 10 of the bill, section 26(f). You say in the third line of your statement, "which might 'offend' the political establishment," and you have the word "offend" in quotation marks.

Mr. Gostick: Yes.

Mr. Sweeney: Once again, I have heard a number of concerns expressed about this section, but yours is the first one where a possibility of offending the political establishment has been brought in. I am trying to understand how you arrive at that.

Mr. Gostick: It is very easy for any group, and a legitimate group, that may be dealing with the environment today or nuclear power tomorrow or civil rights the next day, or something, to be at loggerheads with the establishment today. In any bill which would empower boards or officials to take any action which would in any way interfere with such groups, which may be dissenting groups or protesting groups, I think we have to be very sure that whole function is under the law rather than just under the power of some board.

Mr. Sweeney: If the section dealt with dissent purely for the sake of dissent, I could see your interpretation. But when it clearly says in the third line, "identification by a prohibited ground of discrimination," that would seem to me to eliminate the kind of concern that you are expressing unless, once again, you see something different in it. It specifically refers to a "prohibited ground of discrimination." In the early part of the bill, it says there shall not be discrimination for several reasons, however many there are.

Mr. Gostick: Some of us, of course, might take strong exception to the prohibited grounds of discrimination. We ourselves might wish to protest the prohibited grounds. We might not agree with them.

8:40 p.m.

Mr. Sweeney: What you are saying, if I follow you correctly, is if this bill were to pass and there is a prohibited ground of discrimination with which you, either alone or in concert with others, objected to, if you were to use what you felt were legitimate methods of objecting, then you could be offending the political establishment. That is the line of thinking that you are using.

Mr. Gostick: That is the line of thinking I am using and I am always cognizant of the fact that in this whole approach we have to be very careful that if we are giving rights or protecting rights of one group, we may be taking them away from another. Are we taking them away from the employer to give them to the employee, or are we taking them from the employee to give them to the landlord, and so on? Yes, that is something that has occurred to me.

Mr. Sweeney: The always difficult task in any kind of human rights legislation is to keep in mind the balance of rights. That is our job and it is a difficult one, and you make the point. I can see what you are getting at. Can I just ask one last question because this particular description has come up time and time again and I still have trouble following it?

We are now in part IV of the bill and I have already indicated to you, Mr. Gostick, that there are a number of us who are quite concerned about certain provisions in part IV, the enforcement section--there is no quarrel with that. When you refer to section 38(4) on page 15, you use the term "thought police" which has been brought up before. Could you tell me how you arrive at the use of that term?

Mr. Gostick: Section 38(4)?

Mr. Sweeney: On page 15 of the bill. The little description on the side reads, "Order to prevent harassment." Why do you use the term "thought police" and what does it mean to you?

Mr. Gostick: My impression, reading this section and several subsections in here, is that you have landlords and tenants and you have one responsible for the actions of another, and you are going to have to set up some kind of a policing mechanism in order to handle this thing. I think here we are opening up something where one thing is likely to lead to another. I simply do not think it is workable unless you give the board and its officers very substantial police powers, probably more powers than the police have today.

If you have to give a board or its officers that much power to make it work, then I am suggesting we would probably be better off without the legislation. We would probably be better off with a bit of injustice in society, but with freedom, rather than swapping the one for the other.

Mr. Sweeney: We are coming full circle to the very first question I asked you where your answer seemed to me to be that if there was harassment of an employee in your establishment, you, as the employer, would look after that; you did not need the government to come along and tell you to look after it.

Mr. Gostick: That is true. On the other hand, if I have an employee who is consistently harassed and abused, and her boss has not enough common sense and decency to do anything about it, that employee probably would be well advised to look for employment elsewhere where there would be better conditions, and today she has, or he has, that freedom.

Mr. Sweeney: They might have the freedom of being able to look for another job but maybe not necessarily the freedom of getting another job.

Mr. Gostick: That is right, but surely you are not going to pass legislation and laws in order to have a person work where he or she is not wanted or where he or she does not get a fair deal but gets harassment or something. We are trying to correct all this by legislation here. I do not think it can be done unless we are prepared to give the board more than police powers, and I am afraid to give any board that type of power.

Mr. Sweeney: But, Mr. Gostick, do you not see that what you are saying is that we are going to punish the victim? In other

words, here is a person working for you, man or woman, seemingly doing his or her job. Because another one of your employees does not like the person because of national background, sex or age or whatever, or because the person may have a physical deformity of some kind, that person can be harassed, and the employer either will not or cannot do anything about it. So you say to the victim, because that is what he or she is, "It is too bad, but you had better go look for a job someplace else." Surely that cannot happen in what you call a just society. That is not just.

Mr. Gostick: It probably would not happen in a free and just society because the employer is not going to be so foolish as to let that kind of thing go on or he will be losing his best employees and he will be out of business. As an employer, it is in my interest to see that there is justice and a good feeling of co-ordination and co-operation in my business. That is in my interest as well as in the interest of my employees. In the main, I think most of our employers today are enlightened people, far more so probably than was the case a couple of generations ago.

Mr. Sweeney: I suspect if they are more enlightened, it is because they have been told that they had better be.

Mr. Chairman: We seem to have come full circle, and there are a few more who wish to speak.

Mr. R. F. Johnston: Mr. Chairman, I have comments and questions. You will be surprised to know that I agree with some of the points you have made. I will indicate which ones. Claire Hoy, no doubt, will be surprised too. Somebody should pass that on to Claire just to make him feel better.

I want to raise a point in the context of your last comment in your presentation, which was to the effect that this land of ours has become the envy of the oppressed throughout the world in terms of the freedom that has developed through our system and our approach to government and law. Do you realize that most of the concerns you have raised as moves towards a police state are already things which are at present covered in the present statutes of the human rights commission? Very few of the matters you have raised are new to the new bill. They already exist in the old bill.

If you are saying things are pretty good now but you are worried about the new bill, this is contradicted by the fact that they have not been abused--if that is what you are saying--in the present act.

Mr. Gostick: I think that is a very good point that you have brought up, but I must say I am not too familiar with what you have in your hand there. It seems to me that up to this point there has not been the abuse of power that I think is to be found in this bill as it stands at the present time, where the board and its officers would have more power than the police, the power to barge into a person's business and seize their records.

Mr. R. F. Johnston: They have that under the present act under section 14(2) (a).

Mr. Gostick: They do have that power?

Mr. R. F. Johnston: That is right, yes. I disagree with it. I agree that they should not, but they do have it.

Mr. Gostick: I would say it is a shame that they have it. Instead of putting further time on this bill, maybe you should be amending the other one.

Mr. R. F. Johnston: In a sense that is what we are doing. We are replacing this one with the new one.

Mr. Gostick: I would suggest that you not make the same mistakes in this one that may be found in that one. I am not familiar with it.

8:50 p.m.

Mr. R. F. Johnston: Let me run through a few of the things included in the present one cited by you. First, on your first page, page four of the bill, part II, section 12, the use of symbols, statements, dissemination, et cetera, is covered even more comprehensively in the present act right now under part I, section 1(1) and under section 4(2). It is much more thoroughly detailed in terms of what is involved with symbols and dissemination. It is already there.

I agree with your point in terms of a life sentence. I think there needs to be something which makes that clear in the intent in that area and it is not very clear at this point. The section that you say is loosely worded, section 26(f), to prohibit meetings, ban publications, et cetera, is covered under the present act in section 9.

Part III, section 27, on page 10 might well be used to prevent a wronged or aggrieved person from taking civil action for redress. That is already present in the present act. It is now likewise impossible to take action against a member of the commission. That is not new. As I said, going in without warrant is also covered under section 14(2)(a), although I agree with you that it should not have that power over and above a police force, et cetera, to do that sort of thing.

I agree with you as well about the appeal process. I think it is unnecessarily burdensome at the moment, but it is almost identical to the present appeal system that exists under the present act.

Mr. Gostick: Maybe you could get something a little better in this one.

Mr. R. F. Johnston: Our feeling is that there should be ability to appeal without it having to go to the Supreme Court and that it should be held with a separate group. There are a couple of items which are new in this act and which you refer to, on which I would like to address a couple of questions. The one is the business of the record of offences in the sense that you are going to have child molesters looking after children and that sort of thing.

In the present act, although it does mention that a record of offences should not be a grounds of discrimination, it is very specific about its definition of what a record of offences is. I do not know if you know those sections, but on page four, section 9(1), it is defined as an offence in which a pardon has been granted under the Criminal Code. It is not just a person who has had a record, but someone who has actually gone through the whole process of being pardoned.

It also allows an employer, under section 21(6)(b), to refuse to employ a person for the various reasons because of the nature of the employment. Therefore, in very broad terms an employer could say, "Because this person has a criminal record of theft, I will not allow him to look after money in my store," and use that as a grounds. There are two means of covering that concern you raise. Did you realize that before you raised it?

Mr. Gostick: Yes, I did realize that there might be a cover there.

Mr. R. F. Johnston: Do you still think it would be a better thing to not include a record of offences, that employers and landlords should have some say in deciding a continuation of somebody's sentence virtually? You talk about the life sentence for the other side of things. I would say you are giving a life sentence here.

Mr. Gostick: If someone comes to rent an apartment and you know they wrecked the last six apartments they were in, there may be no record in court or anything, but if you know that, you would have to be a little short on marbles to rent them an apartment.

Mr. R. F. Johnston: If you had proof of that, under the Landlord and Tenant Act you would be able to not accept that person or to release them. It is already covered.

Mr. Gostick: Then why include this if that is the case?

Mr. R. F. Johnston: The reason is that you are trying to protect people who have served their sentences for whatever cause, and in this case have even pardoned as well as having served their sentence, their debt to society, and so that you or I, as an employer or a landlord, do not then extend their sentence, as you say you do not wish to do to somebody who contravenes this act.

Mr. Gostick: I think you do not need it in then. I do not think you need it both ways. I know if someone comes to me and says: "I served a sentence seven years ago. I was pardoned. I paid my price and I see things differently now," I would think a lot of that person for saying that. That would be a good recommendation.

Mr. R. F. Johnston: But there are some people who would not say that and would not hire that person or give him accommodation for that reason. Do you not feel that they should have protection, in the same way as you are suggesting that someone guilty of a racial incident who then improves his record should be forgiven later? Shouldn't the same apply to someone who has already paid his debt to society?

Mr. Gostick: I think they might be fortunate in avoiding such employers as that.

Mr. R. F. Johnston: Again, you are placing the onus on the victim, as Mr. Sweeney has said, rather than on the perpetrator of the discrimination. Surely that should not be the intent.

Mr. Gostick: There is no intent for me to place any burden on victims; you can be sure of that.

Mr. R. F. Johnston: There is one other item and then I will leave it because I promised the chairman I would not be overly long.

Mr. Chairman: Just a reminder, Mr. Johnston, that this is for the purpose of getting clarification from the witnesses as to what they mean. We are not here to convince them.

Mr. R. F. Johnston: Absolutely. I am just trying to make sure that he understood the position and then find his position exactly.

On the whole business of the handicapped and the concern you have about somebody being bankrupted under section 38, do you not feel that that is covered adequately by the statement in section 38(2) which says, "unless the costs occasioned thereby would cause undue hardship," placing that onus on the--

Mr. Gostick: Here, again, who makes these decisions?

Mr. R. F. Johnston: The board.

Mr. Gostick: The board, exactly.

Mr. R. F. Johnston: Who would you rather have make the decision? The perpetrator of the offence?

Mr. Gostick: You have the perpetrator of the offence marked down here as a criminal. If he is, he should be before a court of law.

Mr. R. F. Johnston: No, an offence against this act, is what I am saying.

Mr. Gostick: One of the main complaints I have about this act is that it gives too much power to a board or to officials, more power than police usually have. I simply have not that much confidence in government people to make decisions. I do not think they make any better decisions than people out in the labour community or the business community or anywhere else. As a matter of fact, they make worse ones quite often because they have power without responsibility. If a businessman makes a wrong decision, he loses money and goes out of business. But in politics if you make a wrong decision, you just dip deeper into the taxpayers' pocket next year and you stay right in business, bigger than ever.

Mr. R. F. Johnston: Oh, God, I couldn't--

Mr. Gostick: You couldn't agree with me more.

Mr. R. F. Johnston: Exactly. I have to agree with that one. Our history in Ontario has proven you to be absolutely correct. I have no difficulty with that.

I want to say that I agreed with a few of your points, but I think you will find that the present act covers most of the things you are talking about and has not been abused. At least, you do not seem to be concerned about present abuse that has taken place.

Mr. Gostick: Thank you very much. Would you have an extra one of those?

Mr. R. F. Johnston: You are stretching our budget pretty much. I borrowed this from the minister myself. You may have to go to the bookstore to get this one.

Mr. Chairman: We hope we have a new one in a year or two or three, depending on how long these hearings take. We are a little overtime. Mr. Johnson, you had a quick question.

Mr. J. M. Johnson: I will be very brief. The question was raised by Mr. Gostick and Mr. Johnston followed up on it. I would just like to refer this to the minister and see if there is a misunderstanding. It is page two, sections 4(1), 4(2) and 4(5). Maybe the deputy minister, who has been here tonight, can help.

Hon. Mr. Elgie: What were the sections?

Mr. J. M. Johnson: Section 4(1), "Every person has a right to equal treatment in employment without discrimination." Then it goes on to list a number, including record of offences.

Then section 4(2) again includes record of offences. Section 5 repeats all the others mentioned with the exception that you have excluded record of offences. Is there something that I am missing? Why is that? Was it an oversight, or is there some rationale?

9 p.m.

Hon. Mr. Elgie: I would have to doublecheck on the background on that. I would be glad to do that when we get to clause by clause.

Mr. J. M. Johnson: I just did not know about that. Everything else was repetitious with that one exception.

Mr. Sweeney: It seems to be only in section 4 unless I am missing something.

Hon. Mr. Elgie: We will check that.

Mr. Chairman: Thank you very much, Mr. Gostick, for your presentation to us tonight. Next is Urmas Toming.

Mr. Toming: Mr. Chairman, honourable members, ladies and gentlemen, I would like to thank you for having this opportunity to present this brief today.

In the opening statement of Bill 7 it is apparent that the concept of social justice has been based on an arbitrary standard in accordance with the Universal Declaration of Human Rights as proclaimed by the United Nations. However, because of the indefinite use of terms such as human rights, which mean different things to different people, Bill 7 will fail in its proclamation to create a climate of mutual respect for the dignity, understanding and worth of each person so that each person feels a part of his community and is able to contribute fully to the development and wellbeing of that community.

Before we go on, I would like to define our terms of reference according to Christian philosophy. A human right is a divine gift and includes the right to morality, life, dignity and prosperity in body and soul. Dignity is the status of the human soul in relationship to the lower forms of life. Morality is the harmonious function of the soul. Social morality is the harmonious function of society. Brotherhood is the moral society of mankind as prescribed by Jesus Christ in the New Testament. Social equality is the enjoyment of moral worth and dignity. Justice is the will of God in relationship to man.

In the first place, why have legislators seen fit to accept the United Nations as the standard of social justice? Who decided that the United Nations was self-righteous? If we examine the so-called ideals of the United Nations, we may detect a Marxian philosophy veiled in the rhetoric of human rights and brotherhoods. All of the concepts which Christians understand are not present in the official philosophy of the United Nations, nor is there evidence of the same in Bill 7.

The terms of reference in Bill 7, such as dignity, brotherhood, discrimination, equality, justice, sexual harassment, et cetera, are not definitive in the Christian sense and should not, therefore, be subject to rhetorical use which might deceive Christians into supporting an alien philosophy. In fact, it should be made clear to Christians just how the terms of reference would differ with their faith. What we are dealing with here is an objection to the philosophy beneath Bill 7 and not just individual paragraphs which are, in my opinion, misnomers and highly unethical.

To elaborate further, I see much evidence in Bill 7 of a biased approach in the prevention of human rights violations. It has been my experience to note that in the past the human rights commission has denounced Naziism, fascism and white power, but not communism, socialism or black power. I see no reason to suppose a different approach to the problem of reverse discrimination in Bill 7.

In fact, it may even be the intention of Bill 7 to promote the United Nations program of forced racial integration, which would result in the suppression of human rights for those people who choose to maintain a mono-race and culture.

We may see in the example of the United States of America just how their affirmative action program has succeeded in raising the political and social status of the black man at the expense of white Americans. The result is that there is now more racial tension than ever before. When white Americans can find only reverse discrimination in the courts, they ultimately turn towards extremist organizations.

Civilizations are founded on the basis of common interest and mutual respect. They survive only by understanding social morality. Throughout history we see the migration of common cultures because of the incompatibility of religions, customs and philosophies with other peoples. If we recall the doctrines of Jesus Christ we find that his prophesy was for limited peace among nations because mankind will not choose to live according to his solutions. If they did, only then would universal brotherhoods be possible.

When Christ said, "Choose the wisest among you and let him be your servant," he did not limit that to any particular tribe, but to mankind in general. That means also that if we find one culture wiser than another, we should endeavour to learn from them and humble ourselves before the truth, be they white, black or yellow. Therefore, if we have made a success here in Ontario, let those who wish to migrate here follow our example, instead of apologizing to them for our domestic standards of culture and pretending that it is not superior to that of many so-called Third World cultures.

On the question of dignity in Bill 7, let me say that the state cannot decree dignity when it does not abide in the soul of a man. No Christian should be compelled to accept a popular or fashionable concept of dignity, such as is presented by women's liberation and gay liberation. I say, therefore, that it is the right of every Christian to reject from their company, employment or social function any undignified or immoral person. By giving social acceptance to such a person, you are in fact violating his human right to dignity and morality. Make note also of the fact that I make a distinction between human right and human freedom. While a person is free to be wrong, he does not have a right to be so. Right necessitates the approval of God.

As far as social equality is concerned, a political act does not make men equal. The only equality God gave us was to be equal in dignity and morality. Intellectual and physical equality must find their own levels in human nature and physiology.

The dissemination of symbols or literature which infringes or incites to infringe a human right under Bill 7 is subject to punishment, and yet it might not be offensive according to Christian doctrine. Here is an example of yet another state infringement of free speech, expression and thought. Who are the human rights commission to believe in their infallibility to judge the truth of an opinion?

Socrates taught us that it is far better to debate an opinion than to suppress a lie. It is in the interest of righteous

men to expose a lie so that the truth will be known. Socrates himself was concerned with restoring the integrity of his adversaries, aside from his search for wisdom. His methods proved that intuitive reason through dialectics yields new knowledge and virtue to both participants of an argument.

The true Christian is likewise concerned about restoring virtue to his enemies and discovering the truth and is not motivated by malice. Bill 7 takes the premise that all opinion contrary to that of the state is malicious. I have little doubt that the accusers of Socrates or Christ would have found Bill 7 very useful.

Plato understood that perfect societies can only exist with the unanimous consent of the people, and so he wrote in his preambles that society must first be morally converted, for should but one soul dissent, it might lead to a tyranny. Plato never saw his dream come true, but he did set out and try to convert society. His ethics and those of his teacher Socrates became the cornerstone of western civilization until the time of Christ.

To paraphrase Plato, written, inflexible laws are no substitution for a moral education. Until kings become philosophers or philosophers become kings, there will be no hope for mankind. In the example of such wise men and in Jesus Christ, we should find the true course of the legislator. My counterproposal is, therefore, to accept Christ as the standard of social justice and to learn and base our laws on the wisdom of true philosophers.

In concluding, we must recognize that man-made political solutions devoid of God are doomed to failure. God inspires ethical and moral solutions and makes those solutions available to all those who wish to find them.

Thank you very much.

The Vice-Chairman: Thank you, Mr. Toming.

Mr. Sweeney: Mr. Toming, I wonder if you could tell me what in this bill, in your definition, could be called un-Christian.

Mr. Toming: The whole premise of the bill, as I have indicated in my opening statement. Where it says, "An Act to revise and extend Protection of Human Rights," I understand that this was based on the standard of the United Nations' declaration of human rights and I do not consider that to be Christian.

Mr. Sweeney: Aside from what it may or may not be based on, can you tell me any single section in the bill, starting with section 1 and going right through with it, which you see by your definition to be un-Christian?

Mr. Toming: Yes, under the dissemination of information. I do not know exactly where that is. I will have to find it.

Interjection: Section 12.

9:10 p.m.

Mr. Toming: Section 12. You will notice that there is no definition of what is an infringement of human rights as far as, let us say, dissemination of information is concerned. Under that clause, you could find the New Testament is a discrimination against Jews.

Mr. Sweeney: All of the subsequent sections refer back to part I, which defines what discrimination we are talking about. There is nothing in section 1, that I can see--in other words, you make reference to Socrates and Christ and Plato, and my knowledge of those is that they would be offended if people were isolated in terms of how they were treated and what they could do on the basis of their race, their ancestry, their place of origin, colour, ethnic origin, citizenship, creed, sex, age, marital status, family or handicap.

I am just wondering about your definition of Christian, as you understand it in the Testament, and mine is very different. There are certain things in this act with which I have some political and legal difficulties, but I would really like to know what you see that is un-Christian.

Mr. Toming: In the opening statement it talks here of brotherhoods. I cannot understand what kind of definition they are using to maintain a brotherhood in harmony in Ontario, as far as this human rights bill is concerned. Brotherhoods in the United Nations can be Marxian and brotherhoods in the New Testament are not compatible with that kind of brotherhood.

Mr. Sweeney: Tell me, using your definition of brotherhood in the New Testament, what in this would conflict with that.

Mr. Toming: It is not a matter of conflicting with various paragraphs; it is that it is not definitive in the Christian sense. I am only asking that it be more definitive in the Christian sense so Christians can understand if there is any conflict here between their faith and what it says in the bill.

Mr. Sweeney: Could you suggest some way in which that could be done? In other words, what I am trying to say, Mr. Toming, is I do not see where there is an un-Christian attitude in this. You say there is. Can you show me some way in which it can be stated so that your concern would be vitiated?

Mr. Toming: As I said before, it is open to question, as far as I am concerned, as to what philosophy this bill is based on. I see in the opening statement here "in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations." To me, that does not make Christian sense. I asked only that it define exactly what it is that is a "universal declaration of human rights as proclaimed by the United Nations." What kind of human rights? Human rights to a Christian may not be human rights to a Communist.

Mr. Sweeney: All right. Let me go on to another point.

You use the term, late in your statement, "equal in dignity." I would think that the New Testament very clearly is based on the premise that every human being is equal in dignity.

Mr. Toming: We are coming back to the question of what is dignity to the author of Bill 7 and what is dignity to Jesus Christ.

Mr. Sweeney: Could you tell me anything in the Christian message, as you understand it or as it has been revealed to you, that would conflict with those groups in our society whom we believe at the present time are suffering indignities and who need to be protected? Is there one single group there that should not be protected, that is not deserving of its own dignity?

Mr. Toming: I do not disagree that people should be protected, but I do not see that this bill accomplishes that.

Mr. Sweeney: If you say to people that it is wrong, it is unjust--and I would even go so far as to use your terms--it is un-Christian for people to be discriminated against because of their race or their colour or their creed or their sex, surely that speaks of the dignity of man and the dignity of woman.

Mr. Toming: What kind of penalty are you asking for such infractions of dignity and human rights? I do not believe that any true Christian would impose some of the restrictions on discriminatory people as this bill does. It is wrong for a Christian to be immoral but, by the same token, Christ would never have put some of the people in jail that this bill would put in jail.

Mr. Sweeney: What is the immorality in this legislation?

Mr. Toming: I think the immorality is that the government is asking for too much authority over the lives of people. When people have differences of opinion, those differences can usually be settled without the law interfering in them. I think that the basic idea of this bill is that we cannot think for ourselves, that the government should think for us and settle all of our disputes. I think that is the wrong premise.

Mr. Sweeney: If in our society there are people who are being injured, who are being offended, who are being denied a place to live, a job or services in a restaurant or in an hotel simply because of their creed or their sex or their ancestry, are you suggesting to me that we should simply sit back and allow whatever happens to happen and not intervene?

Mr. Toming: I am suggesting there is nothing you can do about it anyway because no law can really force people to live together, as I indicated with the American example of affirmative action. You cannot force people to love each other. That has to come from the heart. This bill is trying to force people to live together and they cannot do it.

Mr. Sweeney: I do not think it is.

Mr. Toming: I do think so.

Mr. Sweeney: Perhaps you could show me where it says you have to love each other and you have to live together, other than the fact that every human being has a right to have a place to live.

Mr. Toming: In this bill there are various penalties for violations of human rights.

Mr. Sweeney: Do you think there should not be?

Mr. Toming: I do not think that this bill should deal with a problem that can be settled outside of the government.

Mr. Sweeney: What if it is not settled outside of the government?

Mr. Toming: There is going to be injustice no matter where you go in the world, my friend, and I do not think you can deal with it in this way. Jesus Christ never intended for us to live in paradise in this world. People who think we can have a paradise in this world are deceiving themselves.

Mr. Sweeney: Do you have a sense that were Christ present in the world today and saw some of the injustices that take place in our society that he would approve of us simply standing back, allowing them to happen and doing nothing about it, or at least not attempting to do anything about it?

Mr. Toming: I do not agree that he would approve of them but, by the same token, he would not impose his will on anybody. He never did. When he was alive he did not impose his will on anybody. He only told what would happen to people when they did not abide by his judgement.

Mr. Sweeney: But he surely gave one overall commandment.

Mr. Toming: What was that?

Mr. Sweeney: To love one another.

Mr. Toming: That is right, but not by force of Marx.

Mr. Sweeney: What does it mean?

Mr. Toming: It does not mean by force.

Mr. Sweeney: What does to love one another mean?

Mr. Toming: It means that if you do not love one another, you are going to live in conflict with one another. That is what that means. He gave us the freedom of choice to live in conflict or to live in peace. He did not mean for us to impose love on one another. You cannot do that.

Mr. Sweeney: But he did not say, "Love one another if you feel like it." He said, "Love one another." That is a commandment.

Mr. Toming: Did he say, "or else?"

Mr. Sweeney: You make a statement at the very end of your brief of an attempt to convert society. Is not legislation, which sees injustice in the world, not a form of attempting to convert society?

Mr. Toming: I do not see that this bill is an attempt to convert society morally. I think that should be dealt with in the schools with the youngsters. That is the only way you can convert society and that is the method that Jesus Christ prescribed also. You convert society by talking and teaching to the youth. Socrates tried the same thing.

Mr. Sweeney: I think we disagree. Thank you, Mr. Chairman.

Mr. R. F. Johnston: I disagree with almost everything that you have said, but I believe you have the right to say it and you should be tolerated for saying it. I believe that is a fundamental premise which is behind the act we are dealing with.

I want to ask you a question arising out of--these pages are not numbered, unfortunately, so I am not sure what page it is--what seems to be page three, at the bottom. There you say, "When Christ said, 'Choose the wisest among you and let him be your servant,' he did not limit that to any particular tribe... That means also if we find one culture wiser than another, we should endeavour to learn from them."

Then you say, essentially, people who migrate here should follow our example instead of us apologizing to them for our domestic standards of culture, et cetera. You believe that some cultures are wiser and, therefore, I presume, better than others. Is there one which is best?

Mr. Toming: I do not have the wisdom to answer that question.

9:20 p.m.

Mr. R. F. Johnston: It seems to me you are saying that ours is better than some. Can you tell us better than which?

Mr. Toming: I can only give you some examples: India, Uganda--

Ms. Copps: Are they better or worse?

Mr. Toming: --Communist China. Those are some examples.

Mr. R. F. Johnston: That are worse.

Mr. Toming: That are worse than ours.

Mr. Sweeney: In what way?

Mr. Toming: The standard of living, social injustice, poverty, lack of industrial potential.

Mr. R. F. Johnston: You say we should not be striving for perfection here on our side. I agree with you.

Mr. Toming: I did not say we should not strive. I said that we would never accomplish it.

Mr. R. F. Johnston: Right. Striving for perfection, if you can never accomplish it, seems to me to be a waste of time, but you can strive for betterment.

Mr. Toming: I do not think it is a waste of time because what you do on earth is judged by God and when you die you will be judged on your merits.

Mr. R. F. Johnston: So it is a good thing for us to try to improve our society.

Mr. Toming: Definitely.

Mr. R. F. Johnston: Some societies are better than others and some of the reasons, I would presume, are to be found in terms of rights, standards of living and those kinds of things.

Mr. Toming: Yes.

Mr. R. F. Johnston: Therefore, dealing with an act, which is trying to make sure that our society, if you will, stays more advanced than others is not something that we should be not proud of, it would seem to me.

Mr. Toming: I do not follow that.

Mr. R. F. Johnston: You have basically said that you do not think this is based on any premises which are of value. I disagree with you fundamentally. It seems to me we are trying to make this a more just society.

Mr. Toming: Your intent might be honourable, but I do not think that the bill will accomplish that.

Mr. R. F. Johnston: You say that following what is your concept of Christian values is the only means to do that, and you have not been able to give Mr. Sweeney any examples of how this bill will be improved by that, except as a laissez-faire policy, and not as a means of trying to better what we are doing here at all.

Mr. Toming: As I tried to explain, it is my assumption that this bill is based on a United Nations concept of human rights. The United Nations concept of human rights is Marxian. It is not Christian.

Mr. R. F. Johnston: Have you read the covenant that is based on--the United Nations 1946 charter?

Mr. Toming: I will read it to you if you like. It says here: "An Act to revise and extend Protection of Human Rights."

"Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations."

Mr. R. F. Johnston: Have you read the 1946 declaration?

Mr. Toming: Yes, I read it some time ago.

Mr. R. F. Johnston: And you think it is Marxian.

Mr. Toming: I think that the people who run the United Nations are Marxian.

Mr. R. F. Johnston: You think that the premise of the declaration of rights for the United Nations in 1946 is Marxian.

Mr. Toming: Not in the wording, but in the intent to carry it out.

Mr. R. F. Johnston: I disagree with you totally.

Mr. Toming: You can feel free to disagree with me, but the history of the United Nations is very well known to a lot of people.

Mr. R. F. Johnston: I see. Thank you.

The Vice-Chairman: Are there any other questions?

Thank you very much, Mr. Toming, for coming and presenting your brief to this committee.

Our next submission is a private submission from Mr. Clifford Brown.

Mr. Brown: Mr. Chairman, members of the committee, I appear before you tonight to propose some additional safeguards in Bill 7 designed to further protect the handicapped, and particularly those suffering the invisible handicap of diabetes, so eloquently described by Reverend Dr. Bruce McLeod in Life Together, but not as yet fully captured in the bill.

I am a 60-year-old, late-onset diabetic who takes insulin daily. The side effects in my case include severe intermittent angina, for which I carry nitroglycerine at all times; virtually no night vision, due to amblyopia of both eyes, which also results in great distress if I have to work at the typewriter under fluorescent light for several hours; and cellulitis of the left leg, which is treated about twice a year by intravenous injection of cloxacillin, rather like the dialysis of a kidney patient.

I can do my work in hospital while the IV is running, but the cloxacillin dose is too great for oral ingestion. So about twice a year, sometimes three times a year, I am laid up for 72 hours. the rest of the time I am a very productive civil servant, producing training aids for the Ministry of Correctional Services.

I am happy to say that these aids are now in use across North America and shortly will be in use all over the world. I am endeavouring to produce the aids so urgently called for by His Honour Judge Shapiro and former Ombudsman Arthur Maloney, QC, in their reports on correctional institutions and, while the security training aids have now been completed, there is still a long way to go in the management and human relations aids.

One of my current projects is the application of the Occupational Health and Safety Act, 1978, to the correctional institutional area, and this act will be the basis of some of my later remarks as it affects the handicapped in the work place, and why the code must be added to, to correct certain anomalies of the Occupational Health and Safety Act vis-à-vis the disabled worker.

I am a professional writer, director and producer, and I have no difficulty in doing the job I was hired to do. I do, however, have great difficulty and indeed suffer great distress and some mental anguish, I may say, when I am asked to do heavy work not associated with my trade. These demands have been made upon me more frequently of late as a result of the current constraints program, so that now I am in real danger of being unable to fulfil my revised duties, duties I had no conception of when I was hired in 1973 as a professional writer.

I will be questioning the moral right of an employer to unilaterally vary the duties of a handicapped employee in such a way as to make it progressively more difficult for him or her to continue in employment; this in relation to section 16 of Bill 7, particularly when it is read in conjunction with Ontario Regulation 1013/75, section 74(3) made under the Public Service Act.

As a World War II veteran with six years' active service in Europe and the Middle East, I shall be arguing that section 16, as drafted, reinforces the very real possibility of employer manipulation of medicine as a management tool, particularly in the presence of the contributory long-term income protection plan which is being used, in a flurry of bureaucratic Darwinism, to secure the accelerated attrition reflected in budget paper C.

These figures, around five per cent if you take off the Housing staff transfer to municipalities, cannot be achieved by normal attrition, but only by leaning on the weak, the aged and the handicapped, to take early pseudo-retirement. Employees are paying to be let go.

While this happens in all large establishments to some extent, it is endemic in the Ontario government, which must set its own house in order before it can entertain contract compliance with the code, as the Canadian Civil Liberties Association has suggested.

First, let me make a digression. The accelerated attrition program, with or without the connivance of the London Life Insurance Company, has been occurring while nearly a year has gone by in this protracted revision of the Ontario Human Rights Code, and it now seems likely that this committee stage will continue into the fall session and the bill may not become law much before Christmas. What effect this will have on civil litigation against the crown is anyone's guess, but I would imagine the summer will give the government a chance to clean up its act and review its accelerated attrition policy and the misuse of the LTIP program.

9:30 p.m.

The delay is not the fault of this committee nor of the Labour ministry, but mainly of one particular section of the community. I know the handicapped people also delayed it but I am talking about the gay rights movement. This gay herring has had the serious effect of postponing legitimate human rights reforms, especially in the handicapped sphere. This has made me, as a self-styled spokesman for diabetic rights, both impatient and angry, so much so that I want first to advance two powerful arguments for the committee's consideration in dealing with so-called gayrights.

The first argument is constitutional. Respectfully, I suggest that, backed by counsel, the committee should argue that these gay issues are ~~ultra vires~~ the province until such time as the Criminal Code of Canada is revised to make certain commonly practised acts legal. The fact that these may be victimless crimes does not negate the fact that at present they are still crimes against peace, order and good government, clearly the British North America Act section 91 and not section 92 matters.

The parallel is with marijuana smoking. If the NORML people, that is the National Organization for the Reform of Marijuana Laws, came to you, you would send them packing to Ottawa. So it should be with the gay rights spokesmen. Let them first address section 155, buggery; section 156, indecent assault, male; section 157, gross indecency; section 169, indecent act in a public place; section 170, public nudity; and section 193, keeping or being a found-in in a common bawdy house.

These matters have no place in the corridors of Queen's Park nor, for that matter, in those of any provincial Legislature. You cannot build a framework of human rights around illegal acts. I happen to believe that reform of the Criminal Code is overdue and I think a number of arguments could be advanced in Ottawa. When the law is reformed no doubt the gay community will be back here, but that will be in another year. They will not have succeeded in turning this important Bill 7 into the fruit and nut act, 1981.

If and when they do come back, this committee still has a second good argument to advance. Apart from creed, all other grounds for protection from discrimination are involuntary states of being, not voluntary acts. One cannot control one's circumstances of birth or racial origin. One cannot help but grow old. One cannot prevent the onset of a handicap such as diabetes. Therefore, in such cases, the need for protection from discrimination is self-evident.

But what about homosexuality? Unless it can be shown that this lifestyle is genetically determined and therefore beyond a person's control, we must assume that it is both conscious and voluntary. In fact, the community's own advancement of the "victimless crime" argument can only stand up if it is acknowledged that homosexuality is an act of will.

The question then arises: Should government intervene to protect acts of will from their social consequences if, in fact, there are no victims other than the voluntary participants? Why do they not just lock their closet door?

In the International Year of Disabled Persons, it appals me that the homosexual lobby should so pre-empt and displace legitimate human rights pleas that, for example, my own brief on behalf of diabetics can only be entertained in the last hour of the committee's deliberations before the summer recess. I understand that has been changed now.

The member for Sudbury East (Mr. Martel) told the member for Niagara Falls (Mr. Kerrio) a week ago tonight that Mr. Kerrio had probably employed homosexuals without knowing it. Well, is that not the way it ought to be? To flaunt a minority lifestyle and then demand majority acceptance of it is arrogant, to say the least, and it brackets legitimate concerns with the love that, far from not daring to speak its name, will just not shut up.

So much for the gay herring. My concerns tonight, as a diabetic with angina, fall into three main headings. They are: putting the onus on the employer regarding handicapped working conditions; forbidding the use of medicine as a tool to encourage the early retirement of diabetics and other handicapped persons; and recognizing that, where government is concerned, the contract compliance concept advocated by the Canadian Civil Liberties Association will have no ethical foundation unless and until government leads the way in handicapped provision and nondiscrimination. Government cannot ask more of its suppliers than it is prepared to do itself.

No legislation can stand in isolation from the body of law which Queen's Park has created since the province came into being. Thus, while the province can be proud of the landmark legislation, the Occupational Health and Safety Act, 1978, it must be careful not to create a double standard in the application of that act in the context of the Ontario Human Rights Code.

As I mentioned, I happen to be writing a training aid for the Ministry of Correctional Services on the application of the Occupational Health and Safety Act in the correctional institutional situation, including the role of the joint health and safety committees so, by chance, at this time I am working closely with Ministry of Labour officials, especially those in the occupational health and safety branch.

Members of the committee will be as surprised as I was to learn that the right to refuse work--which, incidentally, does not apply in our institutions but does apply in our offices--is

concerned only with the environmental effects of the work place on an otherwise healthy worker--I underline that, otherwise healthy worker.

Thus, a healthy worker exposed to toxic gases can walk off the job while the situation is corrected. It is possible that healthy pregnant women might be supported, at least until tests were completed, were they to walk away from video display terminals and their nonionizing radiation and 60-Hertz flicker. But, as a diabetic, I have no right to be protected from the flicker of 60-Hertz fluorescent tubes under the act, although there is ample evidence to show that they contribute to my amblyopia, or lack of night vision.

The norm is the healthy worker, and the occupational health and safety branch inspectors have no intention to use the act or its regulations to create what they conceive as sheltered workshops. The regulations will deal first with medicals for exposure to toxic substances, and physical environmental effects are still a long way down the pike. I should add, in parentheses, that Dr. Ann Robinson as pharmacologist--she is the deputy minister in charge of this branch--has brought a brilliant record with her from England, but of course her interest is specifically in toxicity and although it is long overdue, at the same time it has altered the balance, I think, with which the regulations are being processed. The toxic substances and so on seem to be getting a lot of priority now.

Section 17(e) medicals will not permit me to receive an ophthalmic examination for amblyopia. I do not think the regulations have even been proclaimed yet because of problems with the Krever wording of confidentiality, but when they are they will not deal with the kind of problem I have. Now I am trying for such an examination under the Workmen's Compensation Board, even with the stigma that carries, a malingering stigma perhaps, in the minds of my fellow workers.

The last thing I want is compensation. I just want daylight as my working norm as a writer. I need status under this new act, the Human Rights Code, in order to justify that claim for daylight as a working norm. I cannot get it otherwise. I have to prove my handicap and my working parameters through some independent medical, and then have those parameters recognised and validated by my employer.

You can see what has happened. While the onus is on the employer to establish a safe and healthy environment for the healthy worker, the onus is on the diabetic to show cause why he should not work under fluorescent lights for long hours at the typewriter. This is something that must be corrected by the reforms I now propose. If you later read the letter which is appendix one, you can see that this is the show-cause business. I have to go and spend \$300 to get proof that I cannot work in that particular surrounding.

My employer has also made it clear that commitments made at level two of a working-conditions grievance last year will not be

honoured this year in a climate of constraint. The argument is advanced that the ministry is being reorganized and its size reduced, and therefore a working-conditions award made in more affluent times has now gone by the board.

There is, of course, nothing in the Public Service Act or its regulations to indicate for how long a public service grievance board award will stand. The board's decision may be final, that is what the act says, but it certainly does not say anything about it being permanent.

My ministry's attitude is that reorganization, relocation and change in reporting relationship make it a whole new ball game and cancel out any commitments already made to the grievance board. A reform I am proposing would make such an award permanent for handicapped people unless both parties agreed to a change. The alternative, of course, if we do not amend this act in that regard, is to amend the Public Service Act and its regulations.

9:40 p.m.

The constraints program has made my ministry demand that I not only write and produce training programs, but also engage in more menial work for lack of bodies to do the Joe jobs. Were I perfectly healthy, I might react more favourably to this claim upon my services, even though I was hired as a writer, but the attempt is now being made to change the nature of my job fundamentally.

As a diabetic I have to continually point out the legal pitfalls; for example, the doctrine of volenti non fit injuria which, broadly translated, means that if a worker walks into a situation and duties with his eyes open to the consequences, then he absolves his employer from liability and assumes that liability himself. There are several cases on record where this has happened and the worker has been ruined financially as a result.

Consequently, I always refuse to carry passengers in my automobile when on government business, and I am leery of carrying more than a minimum of technical equipment from place to place. I carried almost half a ton of technical equipment from Cambridge to Brampton this morning.

There is a very grey area concerning the third party liability of diabetics while engaged in gainful employment for an employer. The Workmen's Compensation Act may not fully cover situations involving diabetics who go into insulin shock while at the wheel and, as a result, injure others on the highway, destroy their vehicles or inflict damage upon their property.

I obtained a commitment from my deputy minister, after expressing the above concerns, that I would not in future be expected to transport audiovisual material from place to place for others' use, or to carry out technical inventory control. I was concerned because I do have, as a side effect of my diabetes, severe angina pains from time to time. Again that commitment has been broken, because there is now no one else with the technical expertise to validate the operational status of the electronic equipment.

I am supposed to get help to lift the furniture, which is invariably in the way of the technical equipment, but, of course, the help is never there when required. I end up lifting the heavy material myself and wincing from the pain of it. I am literally afraid that the constraints program will be the death of me and that the budget will ultimately be balanced over my prone and lifeless form. It seems my only redress lies in a reform of the code.

I am not looking for a sheltered workshop at all. I suggest that when a person is hired in a certain capacity, then an employer should not unilaterally and knowingly change the duties of a handicapped person in a manner that will eventually make it impossible for him or her to carry on.

This brings me to my second heading, the use of medicine as a management tool by employers. Although all big employers do this, I want to concentrate on the practice in the Ontario government, as it applies to the ageing and disabled in the employ of the Civil Service Commission and its ministries. I am forced to draw upon my own experience, not by way of complaint at this stage but only by way of illustration.

Under section 74(3) of Ontario regulation 1013/75, made under the Public Service Act, a deputy minister may require an employee who he has reason to believe is frequently absent or unable to perform his duties, to submit to a medical examination by the employee health service of the Ministry of Government Services. I went that route--unjustly, I claim, as a diabetic--and for five years have been fighting for redress of that grievance.

If you look at the presently proposed section 16 of the code, it actually can be used to reinforce the injustice of section 74(3) of the aforesaid regulation and to place an ageing or sick employee in multiple jeopardy of dismissal if he or she is forced to undergo several 74(3) medicals at intervals of time, with duties being changed in the interim with the excuse of reorganization, relocation, changing reporting relationship and constraint.

I have proposed to the Ontario Medical Association and the College of Physicians and Surgeons of Ontario that it is unethical for a doctor to carry out more than one such examination at the unilateral request of the employer. I appear to have won my point, for while the employee health service will consult with me and help me, its doctors will no longer bow to the will of my ministry and put me through another such examination against my own will. You can see the tone of the letter that Dr. Chambers has written in the appendix. That confirms what I am saying.

I argued before the Krever commission that consents made under duress were not true consents, that submission was not consent. There is a whole chapter devoted to this and related matters in the Krever report, although the issue remains unresolved pending the introduction of legislation.

I am proposing that the code might be used to prevent disabled persons being placed in multiple jeopardy of dismissal because of a change in the nature of their employment from when

they were first knowingly hired as disabled, or when the employer learned that they had become so; for example, with late-onset diabetes.

The abuse of section 74(3) is compounded by the easy availability of the contributory long-term income protection plan administered for the Ontario government by the London Life Insurance Company. In my most cynical moments I sometimes think that someone in the Frost Building picks up the telephone and asks, "Actuarially speaking, how much does the LTIP fund stand at this month?" When the figure is forthcoming, the word goes out to the ministries to lean on X number of the sick, disabled and ageing, preferably with the buffer of management consultants, to achieve the accelerated attrition recorded with pride in budget paper C.

These figures, around five per cent, I repeat could not be achieved by normal attrition. They reflect a lot of pressure on weaker employees to move from obscurity to oblivion. They also reflect a further hidden benefit for the government, in that the best five years of an older employee are effectively ruined, and his or her pension is consequently reduced. One pays to be let go into poverty.

I am still working for the government, but even so, because of reclassification because of my diabetes, I shall be \$72,000 worse off even if I work until 65 and live to be 75. That \$72,000 is made up of loss of salary, loss of pension benefits calculated on the best five years, and also the loss of my six years' war service which I am entitled to buy back under the old Bill 77. I have kept that option open with a deduction off every paycheque, but it does not even touch the interest. I still owe them \$16,000 and I will never be able to buy that six years' war service back. I think that is a dreadful thing, when somebody has served their country for six years, not to be able to do that.

How Mr. Borovoy can recommend contract compliance of a higher level than is now common within government itself escapes me. We must first set our own house in order by keeping higher ethical standards than those we expect of our suppliers. No doubt, when the Canadian Civil Liberties Association returns, it will wish to respond to this point I now make, that ethics begin at home.

The delay occasioned by the homosexual hiatus, the drafting into legislation of the Krever and perhaps now the Williams reports, which may affect this bill in its final form, may have dimmed my own hopes for redress of the injustice I feel I have suffered as a diabetic, in my final five years of service, at the hands of the Ontario government.

I have included clauses in my draft which would facilitate proceedings against the crown in right of Ontario. I do appreciate that these are technically weak; I also appreciate they are self-serving. But I think I deserve the satisfaction of reading them into the record, so that other minds can appreciate the problem diabetics like myself face and perhaps come up with a more just solution in law.

Section 16 would become section 16(a). Section 16(b) would be, "Notwithstanding the provisions of section 16(a) above, an employer shall not unilaterally vary the duties or conditions of employment of a handicapped employee in a manner which would make it progressively more difficult for that employee to perform such duties or meet such conditions than when the employee was initially hired."

Section 16(c) I know is weak. I do not have the benefit of working with Mr. Stone any more so I know that this drafting needs a lot of work. But what I am trying to say is, "An employer shall not attempt, by any means, to induce the resignation or early retirement of a handicapped employee for reasons of economy, constraint, reorganization, accelerated attrition, complement reduction or other reason, before the legal retirement age of 65 years." I know that is unworkable as it is written, but you know what I am trying to get at.

Section 16(d): "An employer shall not, on discovering that an employee is handicapped, reduce or attempt to reduce the remuneration of that employee below that of his or her peers performing similar tasks or duties or holding a similar degree of responsibility."

Section 16(3): "For the purposes of defining the extent, degree, fact or status of a disability affecting employment, the commission may (1) upon its own initiative; (2) at the request of the employee concerned; or, (3) at the request of the employer concerned, order an independent medical examination of the employee at the commission's expense."

9:50 p.m.

The reason for that comes out of the Krever report; the statement that was made by the employee health service that they are a maintenance organization and not an independent medical group with any kind of doctor-patient relationship. There is no fiduciary relationship between the employee health service and those who happen to go into the Macdonald Block and talk to people. It is a maintenance function. The reporting is to the government, not to the individual.

Section 16(f): "Where an order issues under section 16(e), the commission shall receive from the medical authority examining the employee a general use statement, in approved form, dated, indicative of the handicapped status of the employee, such statement to contain no confidential medical data but merely a summary of the bounds of his or her present employability and any specific limitations thereon."

Section 16(g): "By virtue of this act, such a statement, produced in accordance with a medical examination ordered under section 16(e), shall accord status"--this is important--"as a handicapped person to the person found to be handicapped as a result of the examination; and the document shall be acceptable as evidence, without further proof, in any civil action in Ontario, in any formal procedures or conciliation efforts by the commission, in any subsequent Workmen's Compensation Board proceedings or in any labour arbitration case."

Section 16(h): "In any civil action against the crown in right of Ontario arising from such a medical examination or finding of the commission, time limits regarding procedures against the crown shall be waived, and the statute of limitations shall not apply to any such action."

Section 16(i): "Notwithstanding anything in any general or special act, the provisions of this act and the regulations prevail."

Mr. Chairman: Thank you very much, Mr. Brown. Are there any questions?

Mr. Sweeney: Mr. Brown, we have had two or three groups come before us, particularly groups who have some handicap of their own. They continue to use the term "reasonable accommodation" as being essential in this bill in order for handicapped people to get a genuine chance to get employment.

Mr. Brown: That's true.

Mr. Sweeney: As I understand their definition, it means you could expect an employer to make some reasonable changes in the work place, not unduly costly, but depending upon the size of the employer. In some cases \$1,000 might be reasonable to an employer and in others \$200 might be reasonable.

I gather from the description of your particular working difficulty that the term "reasonable accommodation" would apply. Would that be correct?

Mr. Brown: Yes. All I want is a window with some daylight coming through it. It is as simple as that. I was moved back from Scarborough to 434 University Avenue and put in an office against the wall. You turn the fluorescents out and you cannot see in the room except to grope about. This is the thing I cannot cope with.

I am fine, I have been on the road now for two weeks filming and I have no problems. But as soon as I get back and try to work for three or four hours at the typewriter under fluorescents, then I lose my sight. It is as simple as that. Daylight does not affect it, but fluorescents do.

Mr. Sweeney: I would think that the term "reasonable accommodation" would apply in your case. I just wondered whether you had considered it.

Mr. Brown: Yes.

Mr. Sweeney: I have a couple of questions of clarification; excuse my ignorance. You referred to section 17(e) medicals. I do not know what that means. Could you help me?

Mr. Brown: I do not know whether I have a copy of Occupational Health and Safety Act.

Mr. Sweeney: Just briefly, just so I know what you are talking about.

Mr. Brown: It is one of the specifications under the act.

Mr. Sweeney: Which act are you referring to?

Mr. Brown: The Occupational Health and Safety Act.

Mr. Sweeney: It is not this act; there is nothing in there.

Mr. Brown: No, but I am saying the reason why we have medicals under this act is because this 17(e) medical is no good for a diabetic. These medicals would be medicals that are directly attributable to discrepancies or deficiencies in the environment of the work place itself. The worker has to be a healthy worker. This is the way it is being interpreted down at 400 University--the worker has to be a healthy worker to start with.

"A worker shall, where so prescribed, have at the expense of the employer such medical examinations, tests or X-rays at such time or times and at such place or places as prescribed." The word "prescription" refers to the regulations. The first regulations will be dealing with toxic gases. Somewhere down the road, when they get around to it, they will be talking about physical effects. Probably video display terminals will be next, I would think.

Mr. Sweeney: So your argument is that since you, because of your diabetes, would not be described as a healthy worker to begin with, then the 17(e) does not apply to you in the same way it would apply to a healthy person.

Mr. Brown: That is true because they would argue that this office is all right for somebody who is healthy. It probably is; probably anybody who is not bothered by fluorescents can work under them for hours at a time.

Mr. Sweeney: All right.

This is a difficult point for me, and please bear with me and try to help me through it. You are making the obvious point here--in two or three different ways and even in your suggestions for amendments--that an employer should not be permitted to change the working conditions of an employee who has a handicap.

Mr. Brown: I am saying he should not lean on him. I think there is accommodation to be made.

I do not quite know how to get that into legal phraseology without obviously making a lot of loopholes and making a lot of hardships for small employers. But it seems to me that there is some kind of graduation here; the bigger employers should be able to make a little bit more accommodation. You cannot set an absolute standard for small and large employers, but certainly they should not be leaning on people to get out when they have a contribution to make.

I feel very deeply about this. There is so much work to be done, so much work I can still do, and yet I feel this pressure to get out of it and go on the LTIP program.

Mr. Sweeney: You have certainly identified the area of my concern, because in the private sector, with a number of small employers literally hanging on by their nails to survive and a number of employees depending upon them to survive, it often becomes essential that they have to change working conditions as the number of employees changes, as the job they have to do changes--you are not suggesting--if we were to build it into the legislation in the straightforward way that I hear you saying it, we would really put people in jeopardy.

Mr. Brown: I know you cannot do that.

Mr. Sweeney: You are not suggesting that?

Mr. Brown: No, no.

Mr. Sweeney: No.

Mr. Brown: If there were some counsel available to people who come before this committee, then it would save you a lot of time in the sense that could have been drafted in a way which was more acceptable, but that is just my best effort at drafting.

Mr. Sweeney: Yes.

Mr. Brown: I want to say too that the OPSEU is not 100 per cent behind me in this--I am in management; I am not in the union--but they appeared before the Krever commission when I said more or less the same thing. They are not altogether enthusiastic about this because if you keep a handicapped person on, you maybe take away a job from a younger and fully healthy person. So they were not all that happy about the idea.

Mr. Sweeney: Okay. What I hear you saying then is if there is some way that--to use your expression--we could prevent an employer, who does not really have to do so, from leaning--

Mr. Brown: Yes.

Mr. Sweeney: I am using your words--leaning in an unjustifiable way on a handicapped employee as a way of getting rid of them. They cannot do it legally, but they lean on you so that you have to go.

Mr. Brown: Yes, that is right.

Mr. Sweeney: That is really the point you are making.

Mr. Brown: That is right. Yes.

Mr. Sweeney: Okay. I do not know how we are going to do it either, but I think it is a valid point to bring up.

I have two other questions and they are with respect to your suggested amendments. Section 16(d), you have on your second and third lines, "reduce the remuneration of an employee simply because they are handicapped."

Mr. Brown: Yes. They use consultants to do that. They used Don Martin and Associates to recommend that I be dropped from AM18 to AM17 and the reason for that was apparently my diabetes.

Mr. Sweeney: But you say, in the latter part of that, "still performing similar tasks and duties and holding similar responsibility."

Mr. Brown: Yes. My job did not change at all. I was dropped down a whole \$2,700 a year and my job did not change one iota.

Mr. Sweeney: That is a clear case of injustice in the way in which you describe it anyway, Mr. Brown. That is something that somebody else should look into, because if in fact you are doing the same job as your peers and have the same responsibility as your peers, then I would most certainly agree with you, you should not get a reduction in salary.

If it could be proven that there are certain essential parts of the job that you are no longer capable of doing, then there might be some justification for that, but not the way you describe it.

Thank you. I thought that is what it might be, but, quite frankly, I did not believe that is what it would be.

Down in 16(g) you have in the third line, and you emphasised it--and I am still not sure what you mean--section (e) "shall accord status."

Mr. Brown: Yes.

Mr. Sweeney: I do not understand that. Could you help me?

Mr. Brown: A handicapped person is somebody who is going to be handicapped year after year in his employment. It is not somebody who is sick. It is not going to be a pregnant woman who is off and then comes back. It is going to be somebody who has a definite condition--epilepsy, diabetes, angina, or something like that--where the parameters of the work can be spelled out in the light of the disability. That is really what I am saying.

10 p.m.

If you read that chapter in the Krever report, you can see what the problem is with the employee health service. They cannot do that independently, because they are not in fact an independent group. They just advise the ministries. They do not offer doctor-patient relationship services to employees, they offer maintenance services to employees. It is spelled out fairly clearly in that chapter.

Mr. Sweeney: I asked the question in the light of what follows. The status would seem to flow from the examination.

Mr. Brown: Yes.

Mr. Sweeney: Are you suggesting someone who was believed

to be healthy in the way in which you use the word healthy in your statement, and then it is discovered, through an examination, that they have diabetes--

Mr. Brown: Yes.

Mr. Sweeney: --so a handicap--again, as the way you describe a handicap--is discovered through the examination, on the basis of that, a certain type of status should be defined?

Mr. Brown: Yes. Particularly in relation to 74(3) because it says is "frequently absent or unable to perform his duties." As a result of such an early examination it was determined that I was able to perform the duties for which I had been hired. But then, of course, they changed the duties.

So, is there a moral contract there? That is what I am arguing. Is there a moral contract on the part of government to not wilfully change the--in other words, not to turn me from a writer into a furniture remover--to put it as clearly as I can.

Mr. Sweeney: Yes. We are getting back to that concept of leaning on a handicapped person.

Mr. Brown: Sure, yes. The constraint program has a lot to do with it. You cannot altogether fault the ministries; they just do not have the money or the bodies any more.

Mr. Sweeney: Thank you, Mr. Brown. Thank you, Mr. Chairman.

Mr. Chairman: Thank you very much, Mr. Sweeney. Thank you very much, Mr. Brown, for bringing your concerns to us on the proposed amendments to Bill 7.

This agenda is completed for tonight and the committee will stand adjourned until eight p.m. next Tuesday.

The committee adjourned at 10:03 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT
THE HUMAN RIGHTS CODE
TUESDAY, JUNE 23, 1981



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Riddell, J. K. (Huron-Middlesex L)
Stokes, J. E. (Lake Nipigon NDP)

Also taking part:

Copps, S. M. (Hamilton Centre L)
Johnston, R. F. (Scarborough West NDP)
Miller, G. I. (Haldimand-Norfolk L)
Sweeney, J. (Kitchener-Wilmot L)

Clerk: Richardson, A.

Assistant to Clerk: Van Bommel, D.

Witnesses:

Owen, W., Chairman, Working Committee of the Mayor's Task Force on
Disabled and Elderly Persons

From the Metro Toronto Area Council of the New Democratic Party of
Ontario:

Brant, D., Member
Tomczak, D., Member

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday, June 23, 1981

The committee met at 8:13 p.m. in room No. 228.

THE HUMAN RIGHTS CODE
(continued)

Resuming consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario.

Mr. Chairman: I call the meeting to order. We have just two groups before us tonight. The first is the working committee of the Mayor's Task Force on Disabled and Elderly Persons. Bill Owen is here representing that group.

Mr. Owen: Thank you, Mr. Chairman. I am glad to have the opportunity to address you. I think the legislation before you is extremely significant to the physically disabled. I know you have had a number of deputations before you. The arguments that we advance are, of course, ones that we think are right and necessary in what is already quite a good piece of legislation. I am sure you have heard some of these arguments before, but because of the importance of the bill, because of its significance to the disabled, I think they bear repetition.

I just want to make two corrections to the brief, just minor changes to typographical errors. In number nine at the bottom of page three, where it refers to section 23, the third line begins "This sums...." It should be "This seems a negative approach." On page four, section 11, the third line in that paragraph should be "suggests that the wording be such" instead of "the working be such."

I will just read from the introduction. The working committee on the mayor's task force wants to point out that throughout the month of June groups have been making presentations to your committee. However, we want to emphasize the need for some amendments. Particularly, our position supports that of the Ontario Coalition on Human Rights for the Handicapped. The following is our analysis of the strengths and weaknesses of the bill:

Point one: The provision for equal treatment in various activities is a vague statement which does not ensure equal access to services, facilities and employment. For example, an individual may be treated in the same manner as all other applicants for a job, but might not be given equal access to that job. A person may fill out an application and be interviewed, but be eliminated as a potential employee simply because of a disability. This is discrimination, although the appearance of the treatment is equal.

Recommendation one: That all sections of part I providing for equal treatment be changed to equal access to, in accordance with the recommendations put forth by the Coalition on Human Rights for the Handicapped.

Point two: We are a committee of the mayor's task force on elderly as well as disabled persons. We note that age as the basis for discrimination is defined as being 18 years or more and less than 65 years. Using this exclusive definition means that the ageing population not only faces discrimination in employment, which is presently legislated by mandatory retirement, but also in enjoyment of services, goods and facilities and in occupancy of accommodation.

It is not logical to exclude people from all rights simply because they are excluded from the rights of employment. The working committee of the Mayor's Task Force on Disabled and Elderly Persons feels a flexible retirement age is more appropriate than the present mandatory retirement age of 65. Many people are not ready to retire at 65, while others want to retire earlier. Therefore, we feel that all people should be protected, regardless of whether they are elderly or not.

Recommendation two: That section 9(a) be changed to include people over 65 years.

Point three is one of the major issues that have come before you. The definition of discrimination does not make clear that the employer or service provider must be prepared to make minor modifications in order to accommodate disabled people. The term "reasonable accommodation" means, one, modifications which allow access to premises or facilities; two, modifications which make the amenities of the facility usable; three, modifications to or provisions for equipment essential to the job duties. In order to ensure that reasonable accommodation occurs, it is necessary to amend section 16 as well.

Recommendation three: That sections 9(c) and 16 be changed to include reasonable accommodation in the manner suggested by the Ontario Coalition on Human Rights for the Handicapped.

Point four: The definition of "equal" in section 9(e) is difficult to understand and appears to limit the rights of those protected under the code. The elimination of 9(e) would seem the preferable way of dealing with it because any definition, except "exactly the same," would limit the application of equal.

Mr. Sweeney: Excuse me, before you go on, we are having trouble following your numbering system. Are you referring to the sections in the bill itself, sections 9(c) and 16?

Mr. Owen: Yes, I am.

Mr. Sweeney: Just help me then because section 9(c) in my bill refers to the definition of discrimination. It means differentiation resulting in an exclusion, qualification or preference. I do not see where it has anything to do with accommodation. I am just not sure I am following you correctly. I that what you intended to mean?

Mr. Owen: We are talking about the definition of discrimination. In this case, we are talking about discrimination in employment, how the employer treats a disabled person, and what is reasonable accommodation in providing for that handicapped employee.

Mr. Sweeney: Excuse me, I do not want to confuse you. It is just that I want to be sure I am using the same numbering system you are. Go ahead. I will come back to it later.

Mr. Owen: We are talking about that definition of discrimination in section 9(c).

Mr. Sweeney: Go ahead. Excuse me, Mr. Chairman.

Mr. Owen: Our fourth recommendation is that section 9(e) be omitted. We are talking about the difficulty of defining "equal" in the bill.

Point five: Section 9(j) states what is not included under services. It does not state what is included. A nonexclusive definition which outlines what is included under services would be useful should there ever be complaints. Such a definition should include education, recreation, communications, entertainment, transportation and professional assistance.

Recommendation five: That section 9(j) be changed to define in a nonexclusive manner those things which are included under services.

Point six: The necessity of section 10 is evident because there are some instances where constructive discrimination may be necessary. For example, in setting up affirmative action programs, it is useful to know whether disabled people are being hired and for what sorts of jobs. Superficially, this is discriminatory, but it is constructive. However, such an exemption needs to be stated in a manner which will not provide an easy loophole for discrimination.

Recommendation six: That section 10 be redrafted in specific terms, setting out objective criteria for constructive discrimination.

Point seven is another very major issue in the relation of disabled persons to insurance companies. Sections 20 and 21(3) allow insurance companies the right to refuse insurance for bona fide and reasonable grounds. This is vague. The only reasonable grounds are that a person's situation or condition substantially increases risk.

Recommendation seven: That sections 20 and 21(3) be amended to ensure that the only grounds for refusal of insurance is on the basis of substantially increased risk.

Point eight: Section 21(5) subordinates the Human Rights Code to the Employment Standards Act. The same constraints should apply with pension funds as apply to other insurance policies. Section 21(5) should be modified in a similar manner to sections 20 and 21(3), with the Human Rights Code maintaining primacy.

Recommendation eight: That section 21(5) be modified as suggested by the Ontario Coalition on Human Rights for the Handicapped.

Point nine: Section 23 provides that funds provided to a party by the Ontario government be cut off if employment discrimination occurs. This seems a negative approach. More preferable would be a requirement for a positive approach towards employing minorities. As well, the government of Ontario provides funds for parties providing such things as housing, services and education. These are covered by the rest of the code and should be included under this section as well.

Recommendation nine: That section 23 be amended to encourage a more positive approach towards eliminating discrimination and that it be extended to all areas covered by the code.

Point 10: Section 36 serves to place the onus of proof on the complainant. It is frequently difficult for a complainant to produce hard evidence and it is relatively easy for parties to avoid prosecution. It would seem a preferable approach for the commission to hear the complaint. At that point, it is the responsibility of the complainant to supply evidence to support his or her complaint. Once it is determined that there are reasonable grounds to proceed with an inquiry, the burden of proof should shift to the party that is alleged to have infringed on the right. I am aware, as probably you are, that this also a recommendation in Obstacles, in the parliamentary committee report.

Recommendation 10: That section 36(4) be amended to ensure that proof of nondiscrimination is required once it is determined there are reasonable grounds to proceed with an inquiry.

Point 11: The working committee of the Mayor's Task Force on Disabled and Elderly Persons fully supports the inclusion of a primacy clause and suggests that the wording be such that there can be no exceptions, including the Employment Standards Act. An aspect not covered by the proposed legislation is the discriminatory clause in the Employment Standards Act which allows paying less than minimum wage. There should be no discrimination under any act. We want to emphasize that the Human Rights Code has primacy that clearly spells out the need for change in acts such as this.

Recommendation 11: That section 44(2) be amended in the manner suggested by the Ontario Coalition on Human Rights for the Handicapped.

Point 12: The Ontario Coalition on Human Rights for the Handicapped further recommended that all persons in receipt of public assistance or workmen's compensation benefits should receive full protection under the Human Rights Code. People who are in receipt of public assistance are often discriminated against in areas totally unrelated to their receipt of assistance, particularly in the areas of housing, employment and services. This would be an important addition to the code.

To summarize, the working committee of the Mayor's Task Force on Disabled and Elderly Persons urges the adoption of this legislation with the changes recommended by our committee and the Ontario Coalition on Human Rights for Handicapped.

Mr. Chairman: Thank you very much, Mr. Owen. Are there any questions?

Mr. Sweeney: Yes, I have a couple of them. Can I go to page three of your report and recommendation number six? Could you be a little bit more precise there? What are you suggesting? I did not follow the argument you were making there and I just do not quite understand it.

Mr. Owen: This relates to affirmative action programs. In affirmative action programs you are taking steps to hire specific minorities to try to correct discrimination in the past. I think this occurs with any affirmative action program in regard to any minority. You have this problem of constructive discrimination, where you are, in fact, trying to make sure that in a corrective measure you can then permit those affirmative action programs.

Mr. Sweeney: Could you give me, even in rough terms, how you would word it to achieve the result you are talking about? I do not need a precise wording, but so that I understand better the point that you are making if you were drafting it.

Mr. Owen: I think it would be worded that you can enact a program--I am not a lawyer.

Mr. Sweeney: Let me point out the concern that I think has been brought to our attention before, if I understand what you are saying, that is, the whole concept of reverse discrimination. As a matter of fact, when the coalition was in here, it made it very clear that it did not want to introduce that concept. They made that as one of their preliminary statements. They said, "We also realize the inherent danger of doing that." I seem to sense that is what you are saying. Maybe I am misreading it.

Mr. Owen: This year, for instance, there are government programs that are attempting to encourage employers to hire the handicapped. It seems to me in that situation governments are going out, talking to employers and encouraging them.

You are not setting quotas, but what you have done is spend government money to make employers aware that they should consider the handicapped, that employers can be told what is needed for the disabled. It seems to me that is then an affirmative action program. You are not forcing any of those employers to hire the handicapped at all, but you are making them aware that there is a very real problem in terms of the disabled unemployment record and in percentage of handicapped persons employed. You are trying to tell them what is needed or what is not needed. It seems to me that people might object to even having that program.

Mr. Sweeney: I see what you mean. I guess you are the first one to suggest to us that there could be an objection to the government encouraging employers to be more open. I have not heard that objection before but I think I understand better what you are saying.

Let me move on to page four of your brief and your point 10. One of the areas of fairly deep concern that has been brought to our attention by a number of presenters has been the fact that a person against whom a complaint has been lodged--and there does not appear to be any real evidence, even going so far as to call it a malicious complaint--has little protection in this act. They are almost at the mercy of the elements, so to speak.

You seem to be suggesting that we go even further still to such a person. That is how I would read your point 10. In other words, basically what we are saying is that for those against whom a genuine discrimination can be put, the act seems to cover them pretty well. But if somebody goes out of his way to "get somebody" he does not like, he can run him right down, ruin his reputation and ruin his business. When it is all finished, he can say, "Oh, I am sorry, I made a mistake," and walk away, and the guy is left in a shambles. There really is not much in the legislation to protect that kind of situation. Now how often it happens, who knows.

The only reason I bring it to the attention is that the concern seems to be that the act is already deficient in that sense and maybe we are going to have to deal with that possibility. Your point 10 seems to want to go even further and make it more difficult. Do you see my concern? Or maybe I am misreading what you intend in number 10.

Mr. Owen: We are pointing out that section 36 serves to place the onus of proof on the complainant. What we are trying to do, once a prima facie case of discrimination is established, is have the onus shift on to the person who is alleged to have committed the act of discrimination.

8:30 p.m.

Mr. Sweeney: Let me take it from another point of view. I would read into this that you were almost tampering with a fundamental principle of law in this jurisdiction, that is, you are almost saying to the person, "When we are halfway there, from then on it shifts. I do not have to prove you are guilty any more. You have to prove that you are innocent."

Mr. Owen: I will give you an example from my own experience. When I was first looking for a job--I had an MA from Queen's University--I sent out two letters of application to two community colleges asking for employment. I was just testing to see whether there was discrimination or not. In one letter I put that I was handicapped in a wheelchair. In the other letter I did not say anything. They were almost identical letters.

In reply to the letter in which I had not mentioned the handicap, that community college phoned me back within a week.

asking me to come and teach. I never heard anything at all from the second letter which offered my services and pointed out that I was in a wheelchair. I guess I would ask you, is there any prima facie case of discrimination there? By my lights, there is.

Mr. Sweeney: I suspect I could bring to your attention a number of other people who have experienced the same thing without any handicap at all. There could be half a dozen reasons why they would not get back to you. One is just plain discourtesy, quite frankly, but there could be a number of other reasons.

I guess my concern is twofold. The first one is the whole element of the act that does not seem to provide any protection for people against whom unfair discrimination has been claimed. That is the one problem. The other one is this tampering with a fundamental principle of law in the province. Canadian jurisprudence is that a person literally has to be proven guilty, even someone who is charged with a criminal offence. I do not think you would suggest we go this far.

Mr. Owen: My understanding is there are provinces, and I think they are western provinces, which go much further than this. In other words, you do not even to establish a prima facie case of discrimination. You just have to say that you have been discriminated against. Here you still have to produce a prima facie case of discrimination, so it is not just a simple matter of an allegation.

Again, I am not a lawyer, I am not sure what prima facie then means. I am suggesting to you that I can make an allegation and I can say so and so discriminated against me. They can say, "How do you know?" I know they did. What I am trying to say is I think that other provinces, in regard to human rights, have gone much further than this. Again, this is a central recommendation in Obstacles. This is the same argument that was used in Obstacles. This was the same argument that was used in the coalition thing. It gets into a real problem of how you do prove discrimination.

It seems to me that in the end these things have to be decided by the wisdom of the judge. The records usually are in the hands of the person who has received the application. Say you are applying for a job and have submitted an application. You fill out the form. You then no longer have the form. The question is, how do you get the form back, unless you force the employer to give the form back.

Mr. Sweeney: If I understand the intent of the existing act--never mind the amendments--the procedure is that you would lodge a complaint. If you appear to have any case at all, then the commission picks up your complaint.

Mr. Owen: We agree entirely with that.

Mr. Sweeney: What you are saying here is that the burden of proof should then shift to the party who is alleged to have infringed it. You lay the complaint and then the other fellow has to come and prove he is not guilty, as opposed to the commission having to prove he is guilty. That is a fundamental shift. I do not know whether you intend it or not, but that is the way I am reading what you are saying. Am I making it clear at all?

Mr. Owen: I know what you saying, but I think it would seem the preferable approach to hear the complaint, in other words, that the complaint must be heard.

Mr. Sweeney: That is the role of the commission to determine whether it should be heard.

Mr. Owen: This is where we are in argument. At what stage does the commission decide to hear the complaint?

Mr. Sweeney: That is pretty clear in the act, in my judgement, anyway. You lodge your complaint and present your facts. The commission decides whether in its judgement you have a case or not. If they decide you have, that does not mean you are right, but that you have a reasonable case. I guess the expression is "beyond reasonable doubt." Then they pick it up for you and carry it, which fundamentally is one of the key reasons why the handicap coalition strongly objected to the legislation that was intended about a year ago.

You might remember that situation. They came before us, as members of the Legislature, and said, "One of the reasons we want to be included under the code, rather than under a separate piece of legislation, is that once we have laid a reasonable complaint, then the commission has to pick it up and prove our case for us. Under the other legislation, we had to prove it all by ourselves. We were sort of out there, with maybe one person trying to battle some major company or even the government."

Mr. Owen: Personally, I was not here last year. I was away on sabbatical.

Mr. Sweeney: I am sorry. When you referred to the coalition, I assumed that you had been aware of it.

Mr. Owen: I was away on sabbatical when I heard about it, but I completely agree with their stance. I think that introducing separate legislation was really not a correct move or the part of the government. But that is old history. I am not a lawyer, so I do not know these terms, but we seem to be caught somewhere between prima facie, a case on the face of it, and beyond a reasonable doubt.

I am arguing that if there is a case on the face of it, you go ahead and investigate that complaint fully. You then do not have to keep arguing and arguing because you do not have the evidence in front of you. Does it not make sense that if you have a complaint, and on the face of it there seems to be a complaint that you try to get that evidence in order to make sure that beyond a reasonable doubt, there is discrimination?

What you seem to be arguing for is that you should try to judge his story as it comes out of his mouth, that you do not try to judge the story with the evidence. Surely you should have the evidence in front of you. That evidence, I would submit, is in the hands of the employer, is quite often in the hands of the person who is alleged to have committed the discrimination.

Mr. Sweeney: I do not want to prolong this. I think my point of departure is that there is a significant difference between the commission taking up your case and investigating it on your behalf and carrying that investigation as far as it can, which I would totally agree with, as opposed to what I understand your proposal could mean, that the commission could come to an employer and say, "We have been led to believe that you have discriminated. Now prove that you have not." That is a real twist. That is where I have problems. I think we could talk about it a long time. We have both made our point.

Mr. Owen: I hope I have made mine.

Mr. Sweeney: Yes, I understand it, and that is really my only purpose in raising the question, to be sure I understand what you were saying.

Mr. R. F. Johnston: I have just a few questions of clarification on the number of the items you go through. You feel that the recommendation of equal access to rather than equal treatment handles the concerns that you have.

8:40 p.m.

Mr. Owen: Yes. Again, it is a difficult matter to find the correct wording. The coalition raised this point originally, and I think did a superb job because it gets you into that whole business about equal treatment. I have gone through this argument before. It gets into the question of anybody can enter this building, but if you are handicapped you cannot enter the building. But at least the building is treating you the same as it is everybody else. The building is still the same; therefore, it is an equal. It has not discriminated against me. But whoever built the building did, consciously or not. The point is, however, I do not have equal access to that building.

The same thing goes for services, if services are inaccessible. They are giving equal treatment to whoever approached them because it is a sort of passive situation. The point is that the handicapped cannot get equal access. My conclusion is that equal access should cover it.

Maybe it is the word "access" that bothers people, but for the disabled access has a very strong meaning. It is a meaning that has been developing over the years. It first occurred with respect to buildings because you talk about accessible buildings and accessible service. Then, of course, what has happened is that term "accessibility" has developed into, almost in philosophical terms, accessibility to all kinds of things.

Mr. R. F. Johnston: You would have to define it, I presume. I will come to that as we come to "equal" as we go along. How did you get into the building tonight, by the way?

Mr. Owen: There is a ramp. In the last few years, I know the government has made this building accessible.

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Mr. R. F. Johnston: Do you consider the back door to be accessible?

Mr. Owen: I understand there is a ramp around the front, but I have not seen it.

Mr. R. F. Johnston: It is in the process of being built just for the one day when there will be a day for the disabled out front, but it is a temporary ramp. Do you think that is appropriate access to this kind of building?

Mr. Owen: Yes.

Mr. R. F. Johnston: You do.

Mr. Owen: It is far better than the situation used to be. Let's put it this way. If you have a building that is being designed, it should be designed with an accessible front door. The building code says accessible from any door. But when you have an existing building which has to be renovated and modified, then it is a question of what provides best access at least cost.

Mr. R. F. Johnston: I think that is the case. I find it hard to understand that would be the case for a building for the people. Access should be equal, in very specific terms, in this building.

On your age recommendations, you raised the question of the upper limit. You have not addressed the matter of the lower limit of 18. We have had a number of recommendations brought forward for either abandoning the age in the act altogether or lowering it to 16 because of a certain group of anomalies.

Mr. Owen: You are obviously asking for my personal feeling. I must confess that our committee did not deal with this question at all. I am not going to comment on that.

Mr. R. F. Johnston: In your definitionn of "equal", you recommend that section 9(e) be omitted because of the difficulty with the definition. Because the word would be used, whether with equal treatment or equal access, there would be an interpretation of it if such a thing went to the courts or whatever. Do you not feel it is safer to have a definition of some sort there, rather than to have it left out altogether?

Mr. Owen: I think I will just stand behind the comments.

Mr. R. F. Johnston: I just wanted to make sure I understand and am clear on all of these things.

I have been looking at recommendation seven on insurance. I have been of the opinion that we should just eliminate that section altogether, but your wording there strikes me as being pretty good, "The only reasonable grounds are that a person's situation or condition substantially increases risk."

Mr. Owen: Yes. Let's put it in terms of insurance companies. There are certain disabled people who do have very short life spans, or whose spasticity will cause problems in certain situations. There is no doubt that will occur. The real question is that insurance seems to regard the disabled in a much more severe way than they really should be regarded.

I can give you an example on personal grounds. I bought a house five years ago. When you buy a house, you get all kinds of people on the telephone trying to sell you mortgage insurance. I was not too interested in it, but I thought I would explore it. What happened was that in the course of the conversation I finally said, "Will my disability cause any problems?" That person tried to get off the telephone so fast it was really incredible. Yet a person's mortgage lasts about 20 or 25 years, and there are paraplegics who are still around surviving the Second World War.

There you have an insurance man who just heard the word "disabled" and was determined not to get into the whole question of mortgage insurance. He got off the telephone not knowing who he was talking to, how long the person had been disabled or what the degree of severity of disability was. I think that insurance is a very serious matter. Personally I am covered by group insurance so this does not affect me day to day. But it is a very important matter because people buy insurance, and I think if they buy insurance they should be protected against discrimination and unfair views of the disability of the person.

Mr. R. F. Johnston: One of the disabilities often taken into account by insurance companies is being a woman. At various times I just raise that.

Mr. Owen: They have longer life spans.

Mr. R. F. Johnston: Exactly. I am a little concerned that we move to an actuarial base for allowing discrimination, which is essentially one of the things. I like your idea of risk. I prefer that to just the actuarial concerns that are often raised by the insurance companies.

In recommendation nine, you are concerned about the negative approach to section 23. I presume you do not want to get rid of section 23, but you want to add to it some clause which gives benefits to groups which, in contracts with the government, would take on an affirmative action program and that kind of thing. It seems to me that one does have to have that notion of penalty as well.

Mr. Owen: This gets back to the earlier point about constructive discrimination. If you get right down to it you can say why do the disabled have to be covered by rights and so one. Nobody has hate-the-handicapped campaigns. At the same time, what goes on in codes is that you are protecting certain groups and the handicapped, the disabled, as much as any other groups, suffer discrimination and need to be protected.

There comes a time, obviously, and this has affected the disabled in almost every area of life, where you first try the voluntary approach. We tried that with accessibility. Nothing happened. You then have to enact a code.

Right now we have unemployment. We have always had high unemployment among the disabled. In some way, they are always going to have a higher rate of unemployment. But at the same time, there comes a point in which voluntary action on the part of the private sector does not seem to be helping the employment of the disabled. In other words, there is discrimination. We have, on one hand, protection of the disabled from outright discrimination and, on the other hand, that attempt to encourage employers to look seriously at it. That is the need for affirmative action programs on behalf of government.

Mr. R. J. Johnston: One thing I missed is the definition of "reasonable accommodation." My thought had been just to have some sort of that put into section 16. Your suggestion is we go back to definition, under section 9, and try to come up with something. Do you mean that we should take your three-point definition of reasonable accommodation, or something like that using those points, and specifically insert that in 9(c) after the definition of "handicapped," or the definition of discrimination, in 9(c) perhaps, but someplace there. Are you suggesting that we put in that kind of statement?

Mr. Owen: I think so, yes. The reason I say that is it gets into the question of how important are your definitions and how important is the bill as a guideline. I think it definitely is as a guideline, and it would be very useful as a definition. I would suggest that they be included.

Mr. R. F. Johnston: In recommendation 11, in which you are dealing with the question of minimum wage, et cetera, you are specifically thinking of sheltered workshops and that kind of thing, which have been abused.

Mr. Owen: Yes. This is a very thorny question because, on the one hand, you have the situation of disabled people who cannot perform a job they applying for at the same rate as the nondisabled. You would hope, of course, that they would go into another job. But I think it is wrong for them to say, "Take that job at less pay" on the grounds of their being disabled. I think if they cannot do the job, they probably should be refused the job rather than be paid less.

It is a terrible comparison, but when we talk about discrimination regarding women, the interesting thing is that there was discrimination against women in employment, but the women got jobs and were paid less. That is the way it works. Again, it is a thorny issue. I still think there must be better ways than sheltered workshops in order to meet the employment problems of the disabled.

Mr. R. F. Johnston: I agree with you.

Mr. Owen: I do not know what they are, but I think it is wrong to encourage sheltered workshops as a way of meeting the employment needs of the disabled. They can pay them less than the minimum wage, and we get the situation of disabled people being referred to sheltered workshops as a solution to their unemployment problem. That is what I worry about.

Maybe some of you have seen David Freeman's play, Creeps. David Freeman does a very good job on that. There is a person whom they did not know what to do with and they sent him to a sheltered workshop. Of course, he has done the best satire which has ever emerged on sheltered workshops. It is a very thorny question, but I think that in the end you have to try to--

Mr. R. F. Johnston: I agree with you. I am not trying to be provocative at all, but I think there might be quite a bit of discussion about that notion in committee.

Is your concept that the sheltered workshop might, instead, be better operated as a treatment or rehabilitation centre, in which a person would be receiving funds, essentially in terms of pension or whatever, and not be receiving token remuneration, and that other than that, people who are going to be employed generally would have to fall under both the human rights act and an amended Employment Standards Act?

Mr. Owen: Personally, I justified in my own mind sheltered workshops in that way. I know the situation in Toronto is better now because there is transportation. But it seems to me initially sheltered workshops were primarily another place to go. You all know that the rate of transferral from sheltered workshops into the ordinary working world is not high.

The problem I have with this issue is that I am being very presumptuous in speaking on behalf of other disabled people who do like sheltered workshops. Philosophically, I have my own stand. But I know there are people who have grown up with sheltered workshops and like them; so it is not for me to say abolish them. But I think there is a real question about payments and so on in regard to sheltered workshops.

Mr. R. F. Johnston: Mr. Chairman, I have only one more question. I feel you are getting edgy here on my right. I have great peripheral vision.

Your last recommendation is not, in fact, a recommendation. It is just a statement. The whole question of discrimination in receipt of public assistance has all sorts of indirect applications in terms of discrimination. At the moment, public assistance is not included under section 1. Section 1 is on services where it is omitted. Section 2 has all to do with accommodation. It was essentially raised because of the problems family benefits mothers had of getting accommodation in Sarnia and other locations and they became fairly infamous cases in the last couple of years.

I understand what you are saying about adjusting that to meet services so that there would be no discrimination on that

basis to do with services. But I am not sure how we would work it into the sections on employment, given that the wording of the employment implies that somebody has employment and, therefore, would not likely be on public assistance unless he was on Workmen's Compensation Board benefits.

Mr. Owen: If you take a look at people who are in sheltered workshops, they are receiving nominal sums in addition to their pensions. In fact, you could find a lot of disabled people. I am thinking of one example of one person who got a contract and tried to arrange the contract so that it did not jeopardize his pension. The contract is not going to continue or be prolonged. If it does, then he would get off. They arrange it. This is going on. That person does not have permanent employment, but does have some employment which adds to his income from the pensions. It is arranged so that he does not exceed the guidelines.

Mr. Lane: Mr. Owen, you made some very good points in your presentation. The insurance projection you made was very well done because I have had a lot of experience in the insurance business. I made my living out of it for 25 years. There are situations where the risk is increased, not necessarily because one is handicapped but because of something else maybe.

I suppose a handicapped person is sensitive to his handicap to the point that the gentlemen who was talking to you on the telephone was probably a damned poor insurance agent and was out to find an easy way to insure you. I used to do the opposite. It was a challenge to me. If I could help the person get insurance he needed, then that was something I had accomplished. It may have been that it was not necessarily the industry discriminating against you, but it may have been one agent who wanted an easy dollar and thought, "Well, I have to go through a lot of hassle to get this man a policy, so I won't bother." But you have got it straight that there are certain circumstances where there is an increase in the risk.

Mr. Owen: Sure.

Mr. Lane: When Mr. Johnston mentioned insurance, I am not too sure whether he thought the insurance company was discriminating against women or not. Women get insurance cheaper than men do because they live longer.

Mr. R. F. Johnston: Exactly, it is reverse discrimination.

Ms. Copps: They are better drivers.

Mr. Lane: I was not too sure how you were comparing that.

Mr. Sweeney touched on a point of interest to me. but I do not think he quite got it clarified to my satisfaction. I guess maybe it comes under section 16. In any case, being the devil's advocate for a few minutes, assuming I want to hire somebody for a position, I put an ad in the paper and I get six applications. I interview all of these people and they are all capable. One of them happens to be a handicapped person, but he or she is still

capable of doing the job. For some reason or other, I hire one of the other five. What I am worried about is giving privileges to one person and taking them away from somebody else.

The handicapped person can scream discrimination if he wishes because he was capable. But, for some reason, I chose the other person. If I had hired the handicapped person, the other five people who do not have a handicap cannot scream discrimination because they just made an application for a position and did not get it.

How can you be fair to everybody? I would like to hear your version of that very simple scenario that I project.

9 p.m.

Mr. Owen: My reaction is that in any society we have people who are discriminated against. Let's take our society. In our society we have people who are discriminated against. Usually they are minorities, for some reason or other. In a sense we tend not to discriminate against the majority.

The five people who applied to you are the majority. They have been treated in a way, and you have picked one over the other. I do not know if that is really answering the question, but I think what we have to be aware of is the difficulty disabled people have in getting jobs.

The question comes: Why? Sometimes it is that they are disabled and are applying for jobs which they are not able to do. But if one submits an application and that person's qualifications are equal, then that disabled person must be considered fairly. Then it gets into the question that surely, in your own mind, you have reasons why you have hired one person over those other people. If you can justify that, okay.

Say you have interviewed five nondisabled people, you probably have discriminated against one of them anyway, whether it is a like or dislike or whatever or your estimation of his work. On what grounds can anyone say that you have discriminated against them?

The disabled person because of his disability often does not meet a receptive attitude on the part of the employer. If you do not have human rights, it is very easy for that employer to continue in his nonreceptive attitude towards the disabled. It gets into that whole sense of the grounds or the record of unemployment on the part of the disabled group.

I guess I am just saying that those five other people are part of the majority of the population. They are discriminated against on the grounds of your emotional attitudes in terms of likes or dislikes in sizing them up. But the disabled person might apply to somebody who would say, "He's disabled; he cannot possibly do that job." Therefore, there is no attempt to try to allow him to see if he can do the job, even though his qualifications are the same as those of the other five.

Maybe I am not making myself clear, but that is about the best answer I can give.

Mr. Lane: I guess what I am saying is that if I hire one of the chaps because he happens to be more compatible with me or whatever, the other four able-bodied people have no recourse. They have applied and they have not got the job. I have no reason to tell them why I did not hire them. But if the disabled person goes screaming to the commission that I discriminated against him, then I have to answer to the commission.

Mr. Owen: The situation is that disabled people, by and large, have been refused those jobs in the past and the employer has not had to offer a reason why. I offered my own little example earlier tonight. If the disabled are protected in the Ontario Human Rights Code, that employer is going to be forced to re-evaluate his own attitudes towards the disabled to take a more serious look towards that disabled person as an employee. In other words, he knows he might be faced with a threat of discrimination.

He is going to have to rethink his attitudes. In other words, a person might say, "There is another disabled person; we'll just write him off now." Do you see what I think the difference is? If an employer knows that he cannot discriminate against the disabled person, he will be forced to take that disabled person much more seriously when he discovers that the interviewee he has put on his short list is disabled.

Mr. Lane: I was assuming that after I had interviewed all the people, I realized they were all capable of the job, including the disabled person. Yet the disabled person is the only one who has any rights under this amendment.

Mr. Owen: In a way, you would have been a good employer before. There used to be health questions on forms and that was an easy way for people to write off the disabled before they even got to the interview.

Mr. Lane: I am not going to belabour the situation. I think we understand what each of us is saying.

On going beyond 65, I can certainly appreciate the need for many people to work beyond 65 and to want to work beyond 65. Where would you cut it off?

Mr. Owen: I am not the right person to ask. Obviously, I think there is a question of freedom of choice here. It is going to cause problems for employers because they are going to have to say, "Sorry, you cannot do the job any longer," and that is going to cause problems.

There is a question of choice here. Of course, the whole related question here is that it affects pension plans and so on too. Our recommendation is for not setting it.

Mr. Lane: So you would leave it open.

Mr. Owen: Yes.

Mr. Lane: Regarding advisory capacity, you would agree that it should be open to persons of any age, if a company wanted to hire me in an advisory capacity and I am 75 and have something to offer. But, as you point out, especially with the Canada Pension and most of the company pensions, at 70 there is a problem.

Mr. Owen: It is going to cause a great problem.

Mr. Lane: What would you do about lowering it to 16 from 18? We have had people here who pointed out that there are two years where that young person really has no protection. What about coming down to 16?

Mr. Owen: I have not thought very much about it. You have to prevent discrimination against all people somehow. If you allow discrimination against people up to 18, there is something wrong.

The other point is the question of responsibility. At what age is a person responsible for entering into contracts and so on? What is the other side of that.

Mr. Lane: The age of majority.

Mr. Owen: I do not know what the proper age should be. Personally, I see the problems in that clause as it now stands, but I do not have anything to offer on that.

Mr. Lane: I want to congratulate you on the quality of your brief and thank you very much.

Mr. Chairman: We have gone on a considerable time, so I think we have to get on.

Ms. Copps: I have a couple of questions which have not been addressed by any of the previous questioners.

Mr. Chairman: Is it on clarification of the brief?

Ms. Copps: Yes. On your definition of reasonable accommodation, in many of the other sections you have gone along with the coalition, yet in this you are different.

Mr. Owen: No, I don't think so. How are we different?

Ms. Copps: The wording is a little bit different.

Mr. Owen: I think the wording in ours is less legalese; it is much clearer.

Ms. Copps: Yours is a little more specific.

One of the areas that you really do not get into, which I think they intend to, by reading their definition a little more closely, is the area of job modification as opposed to physical modification. You do not really get into that too much in those three areas of reasonable accommodation.

Is that the intent? Have you specifically restricted yourself to physical amenities?

Mr. Owen: I think we have reached up pretty well on the physical amenities.

Ms. Copps: The reason I am asking is that in a number of the other sections you just state you would go along with the coalition's position. I wonder if you have had a discussion and why you have decided to divert from their position on this particular recommendation, although philosophically you are fairly similar.

Mr. Owen: Yes, we are very close.

Ms. Copps: Have you had any discussion because it seems that their definition of reasonable accommodation goes a little further than yours? I wonder whether you deliberately decided to moderate your position.

Mr. Owen: We have not couched ours in legal language as they have. Other than that, it is very close. We have put it in simpler, plainer language. But we have no argument with them.

Ms. Copps: But you also do not get into the definition of job modification, other than from a very physical, structural aspect. They are looking at reasonable accommodation, including taking the essential duties of the job and applying them.

9:10 p.m.

Mr. Owen: Personally, I would agree with that. It is not in our brief but this is the whole concept of definition of job. It is making the committee aware that you can add duties on to the job that would exclude the disabled. It is an easy way to exclude them. The other thing is it gets into the whole definition of job performance. That is another philosophical concept. It is not in our brief and I do not think even the coalition raised that issue.

If you emphasize the physical, I think it is easier to understand. What we are also doing, I think, in raising the physical aspect is trying to point out that an employer should not rule out the disabled person out of hand because he thinks he has to buy all kinds of special equipment and so on.

Let me give you one example here too. I was thinking about this question. Years ago when there was legislation regarding women in the work place, one of the things that came out, of course--and this is in the movie "Norma Rae"--was the provision of washrooms for women. You now have washrooms for women and you have washrooms for men. The question now is making sure that those washrooms are accessible to the physically handicapped. It seems to me in that way it is a continuation of some of those same provisions. It is trying to focus on to the physical accommodation.

Ms. Copps: I just have one other question. You do not address at all the fact that these amendments to the Ontario Building Code will not be tempered by the changes in the new code.

Mr. Owen: We are in favour of primacy and we would hope that this law would take precedence over the Ontario Building Code in regard to these things. That is an issue that we think is covered in our discussion of primacy.

Mr. Chairman: Thank you very much, Mr. Owen. We only have two groups tonight and we appreciate the time you took to clarify your brief. Thank you very much for appearing before us.

Mr. Owen: I am very glad to have had the opportunity.

Mr. Chairman: Mr. Tomczak.

Mr. Tomczak: I am here with another member of our executive, Don Brant, who will be available to answer questions. I will present the brief. I think it is just being handed around now. Perhaps I will just wait until you all have a copy of the brief.

I would like to make it clear that I was authorized to come here by the executive of the Metro NDP to address two particular concerns. Obviously, I think, the NDP as a provincial party would have many other concerns with respect to the bill. Probably our members are dealing with some of those.

As a municipal party we feel that these are two particular areas that have municipal interest. We have specific policies in these areas and that is why we are bringing them forward to you. The two areas are discrimination against families in rental accommodation and the inclusion of sexual orientation in the Human Rights Code.

In a time of severe housing shortage, families with children have been the victims of systematic discrimination, mainly by corporate landlords. A few years ago many owners of large apartment buildings began a policy of banning tenants with families. There is no law that prevents them from doing so.

Families with children have a more difficult time in renting accommodation than do childless people because the cost of dependants leaves only a minimal amount of money for rent. In Metro Toronto, families with children have an especially hard time. Two thirds of the residents of Metro Toronto are tenants, and four fifths of these tenants live in large apartment buildings. When the owners of these buildings conspire to ban families with children, as many have done, then family life in Metro Toronto is under severe attack.

There is no so-called right to ban children. Children do have a natural right to a place to live, just as do the members of any other minority group. New Brunswick, Manitoba and Quebec all ban such discrimination by provincial legislation. So do many countries other than Canada. The furthest that the government of Ontario has come is to pass enabling legislation giving the city of Toronto the power to ban this kind of discrimination.

I would just like to interject that last night the mayor's committee on race relations in the city of Toronto passed a recommendation that discrimination on the basis of adult-only buildings be outlawed. Perhaps you will be getting another presentation from another mayor's committee from the city of Toronto.

Therefore, at present, the only legislative authority to ban this discrimination is held by the city of Toronto. Unfortunately the bylaw which city council passed in 1976 is so toothless that it gives no protection to families with children. This has come about because the powerful corporate landlords launched a massive campaign against the bylaw and succeeded for a time in diverting attention from the campaign for rent control and in weakening the political support for families with children.

Furthermore, tenants with children in other parts of Metro or in other municipalities of Ontario will receive no protection from a bylaw of the city of Toronto. This is a matter of human rights. Discrimination against children is just as bad as is discrimination for reasons of race, religion or sexual orientation. We, therefore, ask that the Human Rights Code be amended to ban discrimination in rental accommodation everywhere in Ontario.

Perhaps I could just interject again, and this is something that someone who has a young family feels very intensely about. Given the current situation with the interest rates and the extreme difficulty of buying housing, I think it is unfortunate that there are any barriers to families at all. I know that for my wife and me it was a major worry as to where we would live. We are fortunate that we bought a house about a year and a half ago very inexpensively. But it is clear, I think, from everything that is going on at the present time, and all the press reports indicate it, that very few people can actually afford to buy a home. I think it is unfortunate that there is any discrimination in rental accommodation for people with families. It makes it extremely difficult for people to even conceive of having a family. I would hope that the committee would address that.

To move on, the widely acclaimed 1977 report of the Ontario Human Rights Commission entitled, Life Together, stated: "Because they are not protected from discrimination on the grounds of their sexual orientation, many people in Ontario who are homosexuals live in constant fear that they may lose their jobs, their living accommodation and other basic necessities, if their sexual orientation becomes known."

Homosexuals should be given "the same protection against discrimination which is provided to their fellow citizens, by including 'sexual orientation' as a ground on which discrimination is prohibited by the code."

We of the Metro Toronto Area Council of the New Democratic Party of Ontario totally agree with this section of the report. During the last six months, as vicious a campaign of hate literature as ever has been launched against any vulnerable

minority group has been unleashed against homosexuals and others who choose to speak out for gay concerns. The February and June raids by the Metro Toronto police against the gay bathhouses showed the same type of brutality and vindictiveness as did the pogroms launched elsewhere against other oppressed minorities in the past. It appears that there is no recourse under the Human Rights Code of Ontario for those offended.

The policy of our provincial party is very clear on the issue of sexual orientation. It states: "Therefore, be it resolved that the Ontario Human Rights Code be amended to include the term 'sexual orientation' in order to assure the basic civil rights of homosexual men and women."

9:20 p.m.

In order to make this policy a reality, the Metro Toronto Area Council of the New Democratic Party established the following policy: Regarding Metro and area municipal employees, the Metro NDP supports the protection of employees of Metro Toronto and area municipalities through the provision of clauses banning discrimination on the basis of sexual orientation.

Regarding social services, the Metro NDP supports the provision of sympathetic social service resources for members of the gay community.

Regarding education, the Metro NDP supports the continuing efforts made by NDP trustees to eliminate discrimination against gays in the school system.

Regarding police, the Metro NDP supports the efforts of the Toronto gay community to eliminate the harassment and unsympathetic treatment of the gay community by the police. We also support the right of gay employees of the Metro Toronto area police force to be protected against discrimination on the basis of their sexual orientation.

We, therefore, ask that the Human Rights Code be amended to include the term "sexual orientation".

If I could very briefly interject my own comment, I feel that for a long time in which this was not an issue it might be something about which people could say, "Okay, we do not want to really deal with it; it is not an issue; it is not really being discussed by society." In the last few months it has become very clear that it has become an issue. By refusing to move on it, the effect is a climate has been created in which it is being said that discrimination is okay. By not moving strongly on it, once this kind of discrimination becomes a clear issue in our society, we are in effect saying that discrimination is okay; it is all right to go out and launch hate campaigns.

I know for the Metro NDP our policy came as a direct response to the events of last fall. We adopted that motion I read, this four-point motion, in September and it was passed recently by our convention. We have spoken out in the past, in February, as a result of the bathhouse raids. I know the reason the Metro NDP tried to come to grips with it is as a result of the events of the last few months.

s To finish, these proposed amendments to the Ontario Human Rights Code do not talk about abstract principles. They speak of particular liberties which should be guaranteed to all members of any democratic society.

Mr. Eakins: In regard to housing for those people with children, what you are asking for here is some protection for these people with children.

Mr. Tomczak: I think specifically we are asking for the removal of section 19(4).

Mr. Eakins: Metropolitan Toronto or the city of Toronto, which I suppose is the main area where complaints would arise, has that opportunity, it seems to me, separate from this Bill 7. Why is it not working here? Why would it work in Bill 7 if it is not going to work in Metro Toronto or the city of Toronto?

Mr. Tomczak: We should be clear. My understanding is that it is only in the city of Toronto. It is obviously something that is a political issue; it is a fight that has been going on in city of Toronto politics for several years and council has not dealt with it adequately. It is something that the Metro NDP feels strongly about, that city council should deal with it adequately, but it has not.

Mr. Eakins: Are there not enough supporters on city council?

Mr. R. F. Johnston: They are short of a majority.

Mr. Eakins: My concern is that here we are talking of making this a part of legislation in Bill 7, yet in the largest municipality of Ontario there is an opportunity to make it work and you have elected people, but you say they are not making it work.

Mr. Tomczak: Perhaps one way of looking at it is that it should be clear that children are a minority. I think one of the purposes of the Human Rights Code is to protect minorities. Often in society the majority does not necessarily agree that all minorities should have certain rights. What we are saying is that in a democratic society even children should have rights that should be protected. It is something that should not be left up to the whims of the currently elected municipal councillors. It should be a fundamental right that families have access to housing, except that we have two limitations. I am not sure that they may get into senior citizens' housing and owner-occupied flats.

Mr. Eakins: Do you feel that all areas should be required by legislation to accept families with children, or should there be some exceptions?

Mr. Tomczak: I think I just made it clear. Perhaps it was not clear in the brief, although I thought it was. What is exclusively for senior citizens and owner-occupied flats. I think the act does outline those areas. We are specifically asking for section 4 to be removed. I think that section is very clear in the kind of housing it is referring to.

Mr. Sweeney: Section 4 deals with employment.

Mr. Tomczak: I mean section 19(4), I'm sorry.

Mr. Sweeney: Mine is a supplementary. In section 9 of the bill indicating definitions, it says, "Family means persons in a parent and child relationship." Under section 2 of the bill, it says, "Every person shall have a right to equal treatment in occupancy of accommodation without discrimination because of family."

Mr. Tomczak: If you switch to section 19(4), you will find a very clear limitation on that right. It is certainly the case throughout Metropolitan Toronto that many large apartment buildings fall under that section and access to those buildings by people with families is not allowed.

Mr. Sweeney: You would want section 4 eliminated so that section 2 would apply. That is your point.

Mr. Tomczak: Yes, exactly.

Ms. Copps: Would you carry the concern for the children as a minority group to the extent of excluding any age restriction in the act?

Mr. Tomczak: Perhaps you could tell me where the act specifically refers to that.

Ms. Copps: The present act specifically refers to people between the ages of 18 and 65, so there is, in fact, no protection for children in any way, shape or form. I just wondered whether your concern for children as a minority group would extend to their inclusion as an interest group by eliminating the lower limit on the age description.

Mr. Tomczak: There are two things. I would think that from the sections that Mr. Sweeney read out it is clear that families, which children are a part of, do have some rights.

Ms. Copps: Yes, but the code defines age as between the 18 and 65. I wondered whether you would agree to having a lower limit eliminated.

Mr. Tomczak: My personal opinion is one matter. I cannot commit the Metro NDP to a new policy on children's rights.

Ms. Copps: Your concern about children as a minority group would not go that far.

Mr. Tomczak: In terms of this brief, that is right. In terms of my personal feeling, children's rights are something I feel very strongly about. I hope you understand that I am here to represent two specific policies that we have adopted in the NDP. I am not in a position to make policy for our party.

Ms. Copps: I have another question which you may not be able to answer either. Do you have any thoughts on the alleged search and seizure provisions in the act?

Mr. Tomczak: It certainly is a controversial area. It is not clear to me that it deals directly with our party municipally. We have not discussed that particular issue, so I am not prepared to speak on it. I would hope that our provincial representatives in the New Democratic Party would deal with all sections of the act. As the municipal wing within Metropolitan Toronto, we have clear policies in specific areas that affect municipal politics. We do speak out in larger concerns occasionally, but only after we have done it through our council and our executive have had those kinds of debates.

Ms. Copps: I have just one other question which does tie in with the idea of housing. You are prepared to go along with the exceptions that are developed in the act with respect to owner-occupied dwellings. You did mention that as one exception. Would that also include the other provision in the act which applies to owner-occupied dwellings with four units or less, as opposed to the shared kitchen and/or bathroom? They talk about two areas. Shared kitchen and bathroom is one and owner-occupied dwellings of four units or less is the other.

Mr. Tomczak: My understanding of our policy is that it is flats. So that is clear. On the four units, is it separate entrance that you are talking about?

Ms. Copps: Four units, right.

Mr. Tomczak: I would assume that we are asking that there be no discrimination.

Ms. Copps: You would not be prepared to go along with the present exception with respect to the four-unit, owner-occupied building, but you would be prepared to go along with the exception that applies to owner-occupied dwellings that share a kitchen or bathroom?

Mr. Tomczak: Yes.

Mr. R. F. Johnston: For clarification, that is only for marital status.

Mr. Tomczak: I would want to see the act specifically.

Ms. Copps: He brought it up with respect to the issue of children.

Mr. R. F. Johnston: We are saying that the exception in the act for four units is only for marital status, as I understand it.

Ms. Copps: But I am asking, if he had the inclusion of children, or the removal of that section, would he then agree or disagree with the inclusion of the exception referring to the two categories?

Mr. Tomczak: I am not familiar with the exact wording in the section. I would want to see it before I respond.

Ms. Copps: Basically you have the one which is the owner-occupied sharing kitchen and bathroom, and the second which is referring only to marital status at this point, but if you included sexual orientation and/or children, you could get into the other--

Mr. Tomczak: I understand. I think we are clear that the exception is the flat-type situation. I do not think it is the fourplex situation.

Mr. Chairman: Thank you very much, Mr. Tomczak and Mr. Brant, for appearing before us tonight. I think you have presented your two concerns very clearly to us. That concludes the agenda for the committee tonight. We will adjourn until 10 o'clock tomorrow morning.

The committee adjourned at 9:42 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

THE HUMAN RIGHTS CODE

WEDNESDAY, JUNE 24, 1981

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Harris, M. D. (Nipissing PC)
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Riddell, J. K. (Huron-Middlesex L)
Stokes, J. E. (Lake Nipigon NDP)

Also taking part:

Copps, S. M. (Hamilton Centre L)
Sweeney, J. (Kitchener-Wilmot L)

Clerk: Richardson, A.

Assistant to Clerk: Van Bommel, D.

Research Officer: Madisso, M.

✓ From the Ministry of Labour:

Brandt, A. S., Parliamentary Assistant

✓ Witnesses:

Batchelor, D., Private Citizen

Leach, M., Counsel, Metro Tenants Legal Services

Scollard, T., Private Citizen

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, June 24, 1981

The committee met at 10:12 a.m. in room No. 228.

THE HUMAN RIGHTS CODE
(continued)

Resuming consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario.

Mr. Chairman: I recognize a quorum. This morning, we have three presentations on the proposed amendments to the Human Rights Code. The first witness, representing the Metro Tenants Legal Services, is Mark Leach.

Mr. Leach: Good morning, Mr. Chairman and members of the committee. I am a staff lawyer at Metro Tenants Legal Services, which is a community legal clinic funded by the Ontario legal aid plan. We deal exclusively in the area of landlord and tenant law and with the Residential Tenancies Act. Aside from providing legal representation to tenants in court and before administrative tribunals, we also provide summary advice over the telephone to any tenants who call in with questions or are seeking advice of a summary nature.

Our submission to this committee, with regard to the Ontario Human Rights Code proposed amendments, is in two parts. We are urging the committee to recommend amendments dealing with two areas; one with the rights of families under the code and one with the rights of homosexuals.

With regard to the protection of families, we are urging the committee to eliminate one of the exemptions in section 19 of the act, that is section 19(4). This is an exemption which will have the effect of creating adult-only buildings or parts of buildings which are designated adult only. It is our position that this is an unacceptable exemption in a code that is supposed to be protecting human rights in Ontario.

First of all, we would like to direct your attention to the extremely low vacancy rate for rental units in Ontario, and particularly in Metropolitan Toronto. There are some interesting statistics contained in our brief dealing with various parts of various boroughs in Metropolitan Toronto and with the city itself. By way of example, the city of Toronto's planning board, in a recently completed study, has found that in the central core area of the city, the child population has fallen from approximately 27,000 to 19,000 over the past 10 years and the major factor for that decline is simply a reduction in family housing stock in this area.

The vacancy rate for rental housing in general reached a low point of 0.4 per cent this year, 1981, in Metropolitan Toronto. Obviously, if it is that restricted for people in general seeking

rental accommodation, it is even more difficult for people with families. There are a lot more one-bedroom and bachelor apartments available than there are two-bedroom, three-bedroom and four-bedroom apartments.

The first point is the low vacancy rate makes things very difficult for families to find any decent, affordable accommodation.

The second point in this area is what we feel is the absurdity in discriminating against families and against children in a piece of legislation that is designed to protect the rights of everyone in Ontario. I have never been able to understand any of the arguments that have been made in favour of allowing the so-called adult-only buildings.

I understand some of them deal with the problem of having children under foot and children creating noise and disturbance for other tenants. But in my submission that problem can be adequately dealt with by the existing Landlord and Tenant Act, just as any other problem of noise, or disruption, or interfering with other tenants' reasonable enjoyment of their apartments can be dealt with.

There is a provision for eviction which the landlord can use in the county court to evict tenants who are unable to control their children, or who do not care to control them. It is my opinion that is an adequate way to deal with this perceived problem of children misbehaving. But as a parent, I have yet to be convinced that is the major problem that it has been made out to be in the past. So our second point is that it is simply contradictory to allow an exemption that would discriminate against families and children in a bill that is designed to protect human rights.

The third point is something that is difficult to prove, although I am sure it has been attempted by sociologists and others who are interested in families and in the social structure; it is a personal opinion and one that is shared by the other members of the staff at Metro Tenants Legal Services. That is, that a mixed environment, one where there are all age groups, children, adults, teenagers and elderly people, is the best type of environment to live in.

If you start restricting people because of their age or other factors, it narrows the scope of life and it is not the healthiest and happiest environment to live in. So on that point, which I have no statistics to back up, I would submit that the exemption in section 19(4) should be deleted, or at least this committee should recommend that it be deleted.

I should also note that I understand Ontario was the first of all the provinces in Canada to have a human rights code. However, we seem to have fallen behind in the past few years. Manitoba, Quebec and New Brunswick all have included in their Human Rights Codes, protection for families and children and I think it is time Ontario again moved into the forefront in the area of human rights. I would just like to make that further point with regard to the family.

The next point we want to address the committee on is to urge the inclusion of sexual orientation as one of the protected areas in section 1 of Bill 7. We basically feel, in our experience, receiving calls from homosexuals in Metropolitan Toronto, that there is discrimination against them, threats of eviction, harassment by landlords, and when they have made applications they have been prevented from renting apartments because they are homosexuals. The human rights commission itself, in its report called Life Together, found there was evidence.

The report says: "Although firm statistical data about the number of homosexuals is difficult to obtain, it is clear that they constitute a sizeable majority." As their research confirmed, there has been firing, denial of accommodation to homosexuals, and that they have suffered indignities simply because they are homosexuals. So I think it is clear that there is a demonstrated need for protection for this group in society.

If, as I am sure they do, the members of the committee follow the press reports, they would have read about the attack made on a peaceful demonstration of homosexuals in downtown Toronto last weekend--further evidence, in our opinion, that this is a group which deserves and needs the protection of the Ontario Human Rights Code in order to protect them and provide them with the same rights as other groups and individuals in Ontario.

There have been attempts in other provinces where the Human Rights Codes differ somewhat from the Ontario legislation to extend the protection to homosexuals. In Saskatchewan there was an attempt to use the word "sex" as set out in the general protection, to include the words "sexual orientation." The commission made a ruling in favour of that. However, on appeal to the Queen's Bench in Saskatchewan that was reversed. The court felt that the Saskatchewan Human Rights Commission simply did not have the power to go that far in extending the definition.

In British Columbia, where discrimination is not clearly defined, one of the larger newspapers--the Vancouver Sun--prevented a homosexual newspaper from advertising and the courts reversed a finding of discrimination against the Vancouver Sun for the reason that they felt that it was in the Vancouver Sun's commercial discretion to decide from whom they would accept advertisements.

In our opinion the only way to deal with this problem is to have a specific statement in the Human Rights Code that sexual orientation will be protected. The way we suggest the legislation can be worded is simply to add sexual orientation in with the list of other protected areas in section 1.

10:20 a.m.

It seems contradictory to us to have a preamble as noble and as general as the one contained in the proposed legislation and then to start restricting it and exempting certain people and certain groups. It is something that we find unacceptable. We hope the committee will find it equally unacceptable and will recommend to the Legislature that the amendments be made.

Those are the submissions I have on these two points. They are the only points on which we wish to address the committee. I would be happy to answer any questions.

Mr. Riddell: I apologize for coming in a little late, but I did hear you mention the low vacancy rates of apartments. Inasmuch as this is a very far-reaching bill, I think if we included sexual orientation we would have an all-encompassing bill. I do not know how you would get any more in it than is already.

I am wondering what this bill has to do with low vacancy rates of apartments. You are surely not suggesting that this bill can somehow get more units on the market, are you?

Mr. Leach: No. Our reasoning goes something like this: There is a shortage of housing in Toronto. It is easier to rent to adults only and it is easier for the landlords to maintain the buildings. The tendency has been over the years to restrict buildings more and more to adults simply because the vacancy rate allows them to do it. It is a landlord's market.

Mr. Riddell: What about apartment buildings that have two- and three-bedroom apartments? I fail to see how they can be restricted to adults only. Who in the world is going to occupy those apartments with two and three bedrooms if it is not a family? If it happens to be a one-bedroom apartment, then it is very unlikely that you are going to get a family moving into that type of a unit.

Mr. Leach: You might get a small single-parent family, a woman with a small baby or a small child moving into a one-bedroom apartment. That happens quite a bit among low income mothers or mothers on mothers' allowance who cannot afford anything larger than that.

There is a real shortage of larger apartments, those with two bedrooms and three bedrooms. A lot of the buildings that contain those types of units are being converted into bachelor buildings, bachelorettes, particularly in the city of Toronto where the cost of land is so high. You can get higher rents for smaller apartments for single people than you can get for larger apartments for families. They have more disposable income; they are prepared to pay more to live in the city.

Mr. Riddell: Regarding sexual orientation, do you believe that there is as much discrimination against homosexuals as we are led to believe, or is it only that we hear of the odd case and think it is widespread?

You mentioned discrimination against homosexuals who apply for an apartment. How does the landlord know the person is a homosexual when that person applies?

Mr. Leach: I do not know how he knows, but we get numerous calls from people who feel they have been discriminated against on the basis of their sexual orientation. It comes in over the telephone and we have no way of verifying it. Usually the

telephone line that they are calling in on is the summary advice line and if it is a case of racial discrimination we are able to refer them to the human rights commission. In the case where it is discrimination on the basis of sexual orientation, or where the people believe that they are being discriminated against on that basis there really is nowhere to refer them because they are not covered by the Human Rights Code.

Before you move into an apartment building you really do not have any rights at all, aside from the ones that are contained in the Human Rights Code. Where there is a severe housing shortage it opens the door to a process of selectivity that can be unfair and discriminatory in a lot of cases. It is very simple to include two additional words in section 1 that would prevent even the few cases, if they do exist.

I would refer you again to the report of the human rights commission, Life Together, in which they found substantial evidence of discrimination on that basis. They recommended its inclusion and we support that.

Mr. Riddell: I know what was in the report, but I am wondering just on what they are basing their allegation that they are being discriminated against when they apply for an apartment. I cannot imagine that there is anything on an application form asking whether you are a homosexual. I cannot see a landlord, if he is interviewing the person, coming right out and saying, "I want to know what your sexual orientation is."

Mr. Leach: Most of the people in cities who rent apartments, and I guess that is where most of the rental units tend to be, the landlord himself does not have anything to do with it. The landlord is a corporation with a head office somewhere. Perhaps a management company or a superintendent is handling the rentals and showing the apartments to prospective tenants. There is, in my experience, almost no communication at all between the two levels, between the level of the landlord himself and the level of the people who are actually renting.

As I said, we find there is discrimination on this basis and the human rights commission finds that there is as well. Just as there is nothing on an application form in relation to your sexual orientation, there is nothing there as to your religion or your colour or what country you came from. But all these have been deemed to be valid grounds for protection from discrimination. I do not see that there is any difference. Once you recognize that there is a demonstrated need for protection, that there is demonstrated discrimination, I do not see that there is any reason to stop and omit one group from the protection of the act.

Mr. Eakins: May I ask a supplementary? Is there any indication of applicants for housing indicating that they are homosexual in an effort to set themselves up as a test case to test the law? Have you some record that there are those who want to be test cases?

Mr. Leach: I do not have any statistics about how many there are. This is our experience from our summary advice

telephone line. As far as a test case goes, there is no legal remedy. There is nothing prohibiting discrimination on this basis, so there is no avenue they can take legally to get redress. So, I do not see that there would be any point in setting themselves up for that reason.

Mr. Eakins: I am interested in Mr. Riddell's question, how do they know who the people are and how do they discriminate against them unless they have some reason to know their background and their interest? I am wondering whether, in order to compile statistics, there may be those who want to be test cases in order to test the accommodation laws.

Mr. Leach: The problem is there is nothing to test--unless you are suggesting they are simply trying to get attention from the news media. That is about the only area they have in the public sector where they can get any sort of attention or any access to fairness. As far as the law goes, there is no legal avenue available to them. That is really what we are urging the committee to do; to try to create that avenue.

10:30 a.m.

Ms. Copps: One area you did not touch on was that it is not even necessary that you be a homosexual in these cases. Some people may exhibit characteristics which are stereotypically homosexual; that is, they may appear to be effeminate, et cetera. I think there are cases of people being denied accommodation simply on suspicion of being homosexual. Because there is nothing in the code to protect them, they have no recourse either. There are cases of that nature documented in the Coalition for Gay Rights in Ontario brief, which we received earlier on.

I would like to go back to the housing question. One of the groups that appeared last night, I think it was the Metro New Democratic Party, talked about the protection of families with respect to adult-only buildings. They were, however, prepared to go along with an exception that would be made for what we commonly know as senior citizens' buildings. We have not addressed that at all. Would you be prepared to make an exception for senior citizens' buildings?

Mr. Leach: We have to recognize that the groups that are funding the building of senior citizens' buildings, which I think is CMHC, and the group that is building them, at least in this area, the Metro Toronto Housing Authority, are putting up buildings specifically designed for senior citizens. Unless you can get them to change their policy and create mixed use or a mixed apartment basis-- The reality is that those buildings may not be designed for children and may tend to be smaller apartments. We would be prepared to agree to that kind of exception.

Ms. Copps: So you would go along with that exception.

Mr. Leach: We do not disagree with the philosophy behind it. This is a personal opinion, but the senior citizens I know of do not particularly want to live in a building which is filled

with other senior citizens. They want to live with people of all ages. My personal opinion is that it is a large misconception on the part of the designers and builders of those buildings. But we are prepared to go along with an exception like that just because of the reality of the situation.

Ms. Copps: I do not know what the situation is like in Toronto, but I know in Hamilton, where they have a very active senior social centre, there are probably as many people who like to live in that kind of setting as those who do not.

This is a personal question as well. All the people who addressed the issue of adults-only buildings to date have restricted it to Metro. I know that you represent Metro Tenants Legal Services, so obviously that is going to be your thrust. But I wonder if you seem to think that it is a problem which occurs only in Metro, whereas it is a problem across Ontario from my understanding.

Mr. Leach: We were anticipating questions based on our experience. Our geographic area, in terms of our services, is Metropolitan Toronto.

Ms. Copps: Right.

Mr. Leach: So, we do have figures for that and we can talk with some authority about what is going on in this area. I agree with you that across the province the same sort of discrimination exists.

I went to university and law school in Windsor and I worked in the legal aid clinic there, which is funded through legal aid and also by the university law school. The same problems existed at that time with regard to discrimination against families. The problem is not as severe in Windsor now because the economy is depressed, but finding affordable housing for families was a problem then and I am sure it will be again.

Ms. Copps: You mentioned also the issue of sexual orientation. I understand Mr. Eakins' point that often it is difficult to prove, when you go for accommodation, just why you have been turned down.

When you are actually in an apartment, let's say, and you are evicted and have reason to believe that it is simply on the basis of your sexual orientation, my understanding is that would not be reasonable grounds for eviction under the Landlord and Tenant Act at present. With possession being nine tenths of the law, you do have some protection under the present act.

Mr. Leach: That is the way it works. Once you get in, you have the protection of the Landlord and Tenant Act and you can only be evicted for a cause. Creating a disturbance, damaging the premises, carrying on an illegal business or arrears in rent are the common causes.

Ms. Copps: The reason I ask that is because when you made your original remarks, you did mention instances of people

being refused apartments or being--now I may have heard you wrong, but I thought you said "or being evicted" because they were homosexual.

Mr. Leach: That is right.

Ms. Copps: I just wonder whether you actually do have documented cases where you have fought this kind of eviction attempt and how successful you have been.

Mr. Leach: The problem is that it is one of harassment and attempted eviction. If there is a superintendent or property manager on the premises who wants to clear the building of homosexuals, or of other groups, of families--which is another case--or people who own pets, they tend to go on a systematic basis. They will cover the building with notices of termination against all the people they suspect of being in that category, whether it is family, owning a pet, or being a homosexual, and they can follow that up with withdrawing services, with knocking on doors and asking when they are going to move, or trying to show prospective tenants the premises.

Ms. Copps: Basically driving them crazy.

Mr. Leach: Yes. That is an effective way of evicting people, even though they do not go through the legal channels.

Ms. Copps: Do you have a documented case load of that kind of activity? I do not mean names, but I mean numbers.

Mr. Leach: Yes. The problem is we do not have a case where we have gone to court to defend somebody on that basis. It tends not to go through legal channels.

Ms. Copps: But I am more interested not in a specific case, but a case load; how many complaints of this nature would you be getting in a year, let us say?

Mr. Leach: I have not gone through the statistics. We keep a record of all the telephone calls we get and I would have to go through those to tell you. But we get calls frequently. I would say we get between 20 and 30 telephone calls a day on a service line. I would say once a week or a couple of times a week we would get calls of this nature, either dealing with families or homosexuals.

Ms. Copps: Those calls are actually ones that you can act upon, as opposed to a service line call where somebody is complaining on the basis of--

Mr. Leach: It gets a little more complicated than that. Even though we have the service line on which we give advice to individuals, the orientation of our clinic is to represent groups of tenants. We do not represent any individual tenants at all. We refer those to other clinics. So if it came up in court, it would be in another clinic.

Ms. Copps: The reason I am asking is because one of the

questions in people's minds, like the question that Jack Riddell mentioned, is how widespread is the discrimination and how widespread are the problems. I guess because you are dealing with those kinds of problems on a day-to-day basis, that information will be very valuable for us to have. But I will not belabour that.

The other question I have--you do not get into any other aspects of the act. Are you willing to answer questions about them, or would you prefer not to address them?

Mr. Leach: No. I am prepared to answer any questions on the act. Actually, we are generally in favour of it. There are a couple of things that we are quite pleased about.

Ms. Copps: Do not tell me that. No, I am just kidding.

Mr. Leach: The addition in section 2 of discrimination on the basis of receipt of public assistance is something that is long overdue and we are very pleased about that.

Ms. Copps: How about that? These people are doing some things right.

The other thing I wanted to ask you was on search and seizure provisions. He is giving you a compliment; I am seconding it, that is all.

Mr. Chairman: We have got to move along here, Ms. Copps. Do you have a question?

Ms. Copps: I wanted to ask about search and seizure provisions, search without a warrant, seizure without a warrant. What is your opinion of that?

Mr. Leach: I do not--

Mr. Stokes: Really, Mr. Chairman. I think if people come and make a presentation and want to talk about two specific provisions in the act, or what they perceive as deficiencies in the act, I do not think we should lead them into something that they are not prepared--

Ms. Copps: I asked him whether he would be prepared to answer questions on other aspects.

Mr. Stokes: No, they come here with the idea--

Ms. Copps: I do not mind if he does not want to, but I asked him whether he was prepared to do so.

Mr. Stokes: I think you are putting him on the spot. He is having to look through and find out what it is you are referring to.

Ms. Copps: If you do not want to answer that, that is fine.

Mr. Leach: Actually, I would prefer not to address that particular question because I have not prepared it.

Ms. Copps: Okay. That is fine. Sure. That is why I asked you that.

Mr. Leach: I would really be giving you my personal opinion.

Mr. Chairman: In fairness, these are the points that Mr. Leach has indicated he wishes to discuss and that is certainly his prerogative.

Do you have a question, Mr. Brandt?

Mr. Brandt: Yes, Mr. Chairman. On page nine, the last paragraph, is a comment to the effect that last week there was a peaceful homosexual demonstration. I do not know whether you are the author of this particular brief, but I wonder, first of all, how you came to that assumption, that it was a peaceful demonstration.

Mr. Leach: That was taken out of the Globe and Mail.

Mr. Brandt: It is not quoted as being from the Globe and Mail.

10:40 a.m.

Mr. Leach: No. I think the account, as paraphrased there--the word used in the Globe and Mail was "peaceful," and the impression created by the reports was that the demonstration had dispersed and at that point, the demonstrators were attacked by anti-demonstrators, and the police and marshals at the demonstration had to cordon off the homosexual demonstrators in order to protect them. That was the account which I read in the Globe and Mail and it was based on that.

Mr. Brandt: Whether it was peaceful or not peaceful is really not the point I wanted to get to. But we are addressing this in the context of protective rights that could be incorporated within a particular bill, Bill 7.

I question very seriously whether a demonstration by an identifiable group, like homosexuals, can be peaceful when by its very nature it is provocative to another group in society. You are talking primarily about an accommodation problem for homosexuals. But since you raised the question of demonstrations by homosexuals, I ask the question, surely you are not suggesting that in some way this bill could protect homosexuals when they are demonstrating against other elements in society who find that behaviour to be contrary to their particular standards.

Mr. Leach: We only put that in to demonstrate that there is a need for some sort of protection; that there is an identifiable group which is being discriminated against in various ways because of sexual orientation.

I understood that there were arguments against the inclusion of sexual orientation in the act because they were already protected under other provisions, or that they were not an identifiable group. I think it is clear, from what has gone on in

Toronto in the last couple of years, that there is an identifiable group and that there are numerous examples of discrimination against them in various ways.

Obviously, in a case where they are attacked and charges are laid, they have the protection of the criminal law; that will take care of it. I do not expect the Human Rights Code to address this problem, but it was a recent example of discrimination and we felt that it was worth including just to demonstrate that point.

Mr. Brandt: In my opinion, it weakens the case to some extent by including it because--to give you another, perhaps, poor example, if you were to take a demonstration from one particular ethnic group that another ethnic group found to be of distaste to them, then you will find a counterdemonstration, or some form of reaction that would set in.

I do not how this bill would ever give the kind of protective surroundings that you might suggest by inclusion of this particular point. I can understand your argument with respect to accommodation and also the other point you made, but I really worry about that.

Mr. Leach: I am sorry if I misled you there.

Mr. Stokes: It is called freedom of peaceful association (inaudible)

Mr. Leach: I do not want it to detract from the points we are trying to make, and we are really interested in accommodation because that is the area we work in. It was a matter that was current and I thought it demonstrated--because there apparently is some doubt that there is discrimination. It has even been expressed this morning that there are groups who are discriminating against homosexuals. That is apparently still in doubt. It was included just to lend credence to the fact that there is and not for any other reason. I hope I have not misled the committee by including it.

Mr. Stokes: I have one brief question, Mr. Chairman. Why does the city of Toronto bylaw not work with regard to adult-only accommodation?

Mr. Leach: I think the bylaw that was passed at that time stated that all buildings which were presently adult only could remain so. That was in 1976 and there was a registration procedure. But a lot of buildings have been built since then and they would not be covered by the bylaw and any buildings that were partially adult only and could not meet the criteria at that time would not be covered.

So, it was simply something like bringing it down at one moment in time and trying to please everyone at that time, but it did not cover the majority of buildings in Toronto. It has really been forgotten, so it does not work today.

Mr. Stokes: To the best of your knowledge, is there any place where this situation has been adequately taken care of by a municipal bylaw?

Mr. Leach: No. There is no place.

Mr. Chairman: Thank you very much, Mr. Leach. I think you did make your two points to us quite clearly.

Mr. Leach: Thank you, Mr. Chairman.

Mr. Chairman: We thank you for appearing before us on behalf of the Metro Tenants Legal Services.

Tim Scollard.

Mr. Scollard: Good morning, ladies and gentlemen. While the paper is being passed around, I might just make a point on what Mr. Riddell had brought up earlier, about how can discrimination happen in apartment buildings.

I had that happen to me a couple of months ago, where I was applying for an apartment. They said, "How many people will be living here?" I said, "Two." I gave both our names. The person I live with it is a man. They said, "We don't need your kind around here."

I have had this happen to me three times. I tried to move a couple of months ago to get a bigger apartment. Every time I put down two peoples' names, both male, they basically said, "Oh, sorry." So that has happened to me as well.

Throughout history there have always been persecuted people. The reasoning behind who is deemed less worthy has varied with situations of religion, politics, war, prosperity or famine; and the needs of those in power or majority. Rulers learned long ago to focus the discontents of the people upon a paper tiger to draw attention away from the real problems of the times. As man's knowledge has increased, so has his understanding of situations and issues.

Most cultures in the industrialized world are now losing some of their individuality as we are all becoming more of a global community. Fewer differences separate the blacks from whites, women from men, Germans from Portuguese, Roman Catholics from Anglicans, teenagers from 50-year-olds, the affluent from the below-average-income worker, et cetera. Most can speak freely, worship and vote without interference; the great majority have sufficient food, clothing and health care.

Discrimination is fading as knowledge through education increases. The rate of education is higher now than ever, as all societies realize the handicap of ignorance. The amount of education now available even after school is over must be the most major change in the recent evolution of man. This allows people to change or adapt constantly, not just as generations pass.

It is natural for many people to remember the good old days; less hurry, you did not have to worry about bleeding-heart liberals, no troubles in the world. These people obviously lived on the right side of the tracks.

Many other people would not remember the old days quite so

fondly; examples: those who were physically disabled and sat in the attic most of their days; the blacks who could not get past the doorman to apply for a job; the women working with large companies who never got promoted past receptionist or secretary; the Canadians of Japanese descent who spent the Second World War in a prisoner-of-war camp in Canada. So if you ask the average citizen today, he or she would probably rate our way of life improved.

I feel that when we have discovered the stupidity and cruelty of having held a community within ours in contempt, other fallacies would fall at a quickening rate. This has been happening, with much credit to go to the speed and reach of television in particular, also radio and various printed formats.

The one major difference I have not as yet noted is dealing with sexuality. The difficulty in coping with sexual matters stems from sex being an awkward subject to many people, regardless of maturity or education. Most of us have had experiences while growing up where our parents or other authorities made it clear that ignorance, confusion and fear about sex were to prevail over education and awareness on the subject.

Man has developed a culture beyond the point of basic needs. The adolescent must learn to conform to the path laid out by society, yet he is discovering his own strong desires. So he learns to control his emotions and develops a constructive, progressive path for himself, hopefully. A lack of reliable information often leads to a complex array of emotions involving feelings of inferiority, not being normal or average, feeling guilty about having desires or fantasies.

The more people who can grow up with strong apprehensions of their self-worth or confusion about what they think is expected of them, the better for us all. Many people, through no real fault of their own, have formed inaccurate or even sickening attitudes towards sex and its place in our society.

The obvious basic purpose for sexual interest and interaction is for the continuation of the species by procreation. With some people this instance of conception is the only time permissible for sexual thoughts to cross one's mind. Most people have found a level of sexual action which allows them to feel satisfied and not guilty to anyone. This should be any individual's right, as long as adults do not force or entice those too young to have made their own decisions properly, that no violence or coercion be used, and that sexual acts occur in such a place as people cannot be unwittingly exposed to them.

A high percentage of people have experimented homosexually, often as an adolescent still forming one's mind about, "What are my emotions telling me?" Obviously, the driving force behind having a homosexual affair is not procreation. Most people just realize that it is not as interesting to them as the opposite sex and that their buddies are best as just good friends.

To many people, the rules and peer pressure are too strong to break again, so they believe they will attain heterosexual feelings if they wait long enough. Many people do and can forget

their feelings of uncertainty and lead a heterosexual life, hopefully with complete happiness. Others who wait may do just that. As a result of lack of nerve to come out, their lives are greatly diminished in their fullness.

10:50 a.m.

Some of those who experimented and found they enjoyed being physical with someone they liked of the same sex continued to grow with these feelings and usually are openly gay. To be openly gay is often difficult. Being honest, law-abiding, hard-working, caring for one's lover, relatives and friends does not seem to count for much with some people. They still try to pretend that gays are the lowest class in our society.

Look at the facts. The average gay person makes well above average income, has a higher than average education, is in better physical condition than the norm, commits fewer crimes per capita--especially of a violent nature--and also fewer incidents of child molesting per capita than heterosexuals.

Gays are heavily involved in social work as they know what it is to be troubled. Many gays seem to avoid trouble with the law partly due to the extra justice they would be treated to, especially in prisons where the population is generally of low education and morals. Gays are peace loving because of a life that contends with so much hatred; live and let live gains a lot of meaning.

The success of downtown Toronto's growth and vitality is largely due to Toronto's considerable gay population. The high involvement of gays in the arts has always been well known. Toronto is now considered the third major theatre centre in the world; a coincidence?

Due to the continuing oppression by much of society, many gays learn to just live their own lives as best they can and not to bother with the system. The contributions that can be made by the gay sector are enormous, yet they are not fully made because the system tells us not to bother. If the governments and police forces can learn to treat us as equal citizens, they will quickly realize that we are some of their best citizens and we will all benefit.

Mr. Chairman: Thank you very much, Mr. Scollard. Are there any questions?

Mr. Lane: In the first full paragraph on the last page, you are stating as fact that the average gay makes well above average income, has higher education than average, is in better physical condition, commits fewer crimes, et cetera. Where do you get these statistics?

Mr. Scollard: I realize I had put down these facts without actually saying where I had gotten them from. I guess it is many years of reading information on the gay community across North America, mainly. I have read this a number of times. I cannot actually state to you--I'm sorry that I cannot--but I have

read, something to do with the Metropolitan Toronto police force, that there is much less crime in downtown Toronto than many other cities. A large part of downtown Toronto's population is gay. Even the police force has said, "Yes, it is a peaceful community, especially when it comes to violent crimes."

I have read reports from different societies of people who deal with child molesting that, contrary to public belief, homosexuals do have fewer incidents of molesting. I think that is a fear many people have; that homosexuals are trying to turn other people into gay people by molesting them when they are children or something. That is quite a fallacy.

Mr. Lane: I am not arguing the point, but it is a very broad statement you are making there.

Mr. Scollard: I realize they are rather broad statements, but I believe them all to be true. I have read about all those items myself, but I cannot actually give you concrete facts for them.

Mr. Eakins: Is it common for two males or two females to be turned down for accommodation? In your case, was this an exception? Did they ask your sexual orientation? Or was it just the fact that you were two males looking for accommodation that you were turned down?

Mr. Scollard: That was because I put down it was two males and they assumed we were gay.

Mr. Eakins: I know of many cases where in order to save the expense of apartments, two males or two females will share accommodation.

Mr. Scollard: That is quite true. I think in downtown Toronto the assumption is often made that they are gay. The great majority of couples who live together of the same sex probably would be gay in Toronto, whereas in the suburbs most likely they would just be rooming together. But in downtown the large majority would be gay. That is my belief.

I had never come across that until just a couple of months ago. I have been living with this fellow for over a year. Before that, I had never come across that in my life. So I cannot really say whether it is a common occurrence or not.

Mr. Eakins: So you feel that many others are experiencing this?

Mr. Scollard: I would think so. I don't think landlords really care very much, because they realize there is no big deal about it after all.

I was looking more to renting a house rather than an apartment. These were people who owned the house already and they did not want their house to become a den of sin or whatever their thoughts were. I don't know. But that is what they thought.

Ms. Copps: In the very last paragraph you say, "If

governments and police forces can learn to treat us as equal citizens..." I know there has been, particularly in Toronto, some polarization between those two communities. Maybe that is what Mr. Brandt was talking about earlier when he was talking about demonstrations.

How would you respond to people who make the argument that the kind of activity--I know you are trying to sensitize people to what you are going through, but some people do perceive that as being an anti-police mentality?

Mr. Scollard: I have never been anti-police. I have been an area supervisor of a large company in Toronto and have had to hire paid-duty police officers frequently. I have spent many hundreds of hours talking to police officers. My father also had a lot of contact with the police department. I have always had a great respect for the Toronto police department.

Ours is an official complaint regarding a demonstration last February 20, where I observed a gentleman on the sidewalk who was in plain clothes and jumping up and down, screaming and generally trying to incite to riot. It was proved afterwards that there were over 20 Metropolitan Toronto police officers at that demonstration. It appeared that the purpose was mainly to incite riot to discredit a peaceful demonstration.

After laying that complaint, it got nowhere. I was also at the demonstration on Saturday night and I witnessed large numbers of people being attacked by the counterdemonstration which took place.

The police held these people back from the intersection at Jarvis and Charles so there would not be a confrontation in front of the headquarters. However, it was obvious that the demonstration was dispersing, so the person on the loudhailer said: "Okay, everybody go home. Thank you, good night." The police pretty well dispersed, and then the hooligans--as I consider them--tore about 25 feet out of somebody's picket fence and used all those pieces of wood to attack us.

I observed a number of people getting hit with these two-by-fours. I asked a police officer who was near by if he would lay charges of assault, and he said, no, not unless he saw a knife and someone being stabbed with a knife.

Ms. Copps: He said what?

Mr. Scollard: He said he would not lay any charges of assault. I said: "These people are swinging at the demonstrators who are leaving the area, forcing them off the sidewalk and forcing them to run. Several people are getting hit." He said he would not lay any charge of assault unless he saw a knife and that only after the person had been stabbed.

Ms. Copps: When you were involved with the company that you headed up and you knew these policemen quite well, were they aware of the fact that you were a homosexual?

Mr. Scollard: No. I would not let my employer be aware of that, or I would have been dismissed.

Ms. Copps: So they never knew.

Mr. Scollard: No.

Ms. Copps: Are you still working there?

Mr. Scollard: No, I have changed companies.

My supervisor did make a comment to me one day. He said, "What do you think about homosexuality?" I said, "I guess they're fine as long as they don't bother the rest of us."

He said, "Yes, as long as we don't see people out there demonstrating on the streets." He sort of gave me the impression: I think he became aware of the fact that I was gay, because I never went to any of the company functions with a woman, and I was not alone obviously. He sort of made that assumption I guess. So he told me, basically, "Don't you dare demonstrate."

I found after a while I never got promoted, even though other people were passing me by. A lot of people kept asking me, "Why aren't you getting promoted?"

Ms. Copps: Where you are working now? Are you openly gay?

Mr. Scollard: No.

Ms. Copps: Aren't you afraid that when you come here and make your presentation it will go in the paper or something?

Mr. Scollard: I guess it will be time to come out in the open. My parents do not even realize it. I find it very hard to break the news to them.

Ms. Copps: How did you find the courage to come to this committee?

Mr. Scollard: Mainly because of my anger over the situation that is developing in Toronto.

Ms. Copps: Do you feel that the polarization that seems to be developing is the product of--I personally cannot believe that all policemen in Toronto are against gays.

Mr. Scollard: Oh no, not at all.

Ms. Copps: So what is the problem that is developing, in your eyes?

Mr. Scollard: Still largely public misconceptions about what gay people are. I cannot blame them, because, as I mentioned here, sexuality is a difficult subject and people have been led to believe that it is a real sickness and "it can get you too" sort of idea. So people are very up in arms about it.

I guess that is a natural reaction. I was that way myself

for many years. I guess they don't want it to grow for some reasons.

11 a.m.

Ms. Copps: I know this is rather asking you to go beyond the bounds of what you have already done, but the facts that you pointed out on page four, are documented in various publications. Do you think that you might table them with the chairman? If you have a chance over the summer will you table some of those statistics?

Mr. Scollard: If I could research it, sure.

Ms. Copps: Because that would be helpful to some people.

Mr. Scollard: I realize, especially after the first gentlemen was talking here, that is more in his line of work. He is professional and had all the facts down. I realize this is pretty well just personal feelings and that does not make a lot of headway when it comes to looking at facts. So that would be helpful, yes.

Mr. Riddell: Perhaps you could help me better understand homosexuality. Do you personally believe that homosexuality is a genetic characteristic or a learned response?

Mr. Scollard: I have always been interested in psychology, especially in following Freud and people like that. I am still rather confused about it because I grew up with an exceptional mother and father, I believe, and I received all the care and everything. So I do not even understand totally why I have become gay, yet I know there is no way I can be cured or anything. That is just the way I am. I do not quite understand the reason for it.

I doubt it is genetic, so it must be a learned response.

Mr. Riddell: It must be a learned response; in which case, such a learning process could take place in a classroom or in a boy scout camp. You can understand the concerns that some people have.

I am wondering if my rights, say, are being taken away if we included sexual orientation in this bill. I am wondering if my rights would be taken away if I had no say who was going to lead my boy in the scout pack, or who was going to teach my children in the classroom--or the children's rights being taken away.

If it is a learning process, then the young people can quite conceivably be influenced. I think you have to agree that that is the concern some people have.

Now I have no problem with sexual orientation when it comes to employment for adults or when it comes to getting a place to live and things like that. I guess my concerns stems from the fact that I know these young people can be influenced.

I happened to go through a public school system where we had a homosexual teacher in grade seven. I would just hate to indicate to the members in this room what went on and the kind of influence.

Mr. Scollard: Did he influence the boys?

Mr. Riddell: Oh, it was just terrible. I guess this is why I am a little gun-shy about sexual orientation--

Mr. Scollard: It is making a bit of a generalization to say that any person who is gay and is responsible for teaching or overseeing children is going to try to turn them into gays. There is no such concept. I do not know of any person who is gay who would ever think such a thing.

If somebody uses poor judgement or does something illegal, he should definitely be kicked out of the profession. They should at least be given a chance, because they are good teachers. There are a lot of homosexual teachers out there who people are not aware of and they are doing a good job.

Mr. Riddell: Oh, I am sure there are. It is not the only example I could quote. Just recently in my own riding, we had a priest who had to leave the priesthood because of his association with boys. It was quite well covered up. I give them credit for it. I just hate to see this thing exposed too much. I guess it is another reason I am a little gun-shy about including sexual orientation in this bill.

As far as apartments are concerned, I share an apartment with one of my colleagues. When we decided to move into an apartment, we went to the Manulife, we told the person who took our completed application forms that we were moving in and there was never a question asked. So I guess there is a counterargument to yours.

Ms. Copps: It could also have something to do with your occupation.

Mr. Riddell: Well, who is to say there are not MPPs that are gay? You cannot make that generalization.

Ms. Copps: I know, but still, you get in a little easier that way, I think.

Mr. Scollard: You went through a situation there where you did not receive any prejudice, so I can see your point of view

Mr. Eakins: Mr. Chairman, can I just make a comment?

It rather concerns me that people get up in arms about the school teacher who may be gay and what he is going to teach the kids; but how many people get up in arms over the teacher who has left his wife and kids and has taken on someone else's wife and is back at the school teaching kids? How many people today ever get excited over what he might be teaching the kids in that class?

Today, it is sort of acceptable that maybe half the school can be teachers who have separated or living with someone else. I

do not hear of the school boards being very concerned over what they are going to teach the kids. So it seems to me there is a double standard to a certain degree.

Mr. Scollard: I guess any influence you can say is good or bad, but people do have to learn, children have to learn everything, but I think at a younger age, they should not be exposed to direct influence (inaudible).

Mr. Eakins: But you see examples of where someone has taken up with someone else's wife, they are not married and they are still supposedly teaching children the life skills and everything else in the classroom.

Mr. Scollard: It might be difficult for them too.

Mr. Eakins: It is considered more acceptable, is it not?

Mr. Scollard: Yes, it is for sure. But I do not see how the children can pick up from his teaching that you do not have to stick with somebody after you have made a promise. I do not know if that would really be given over.

Ms. Copps: This is just for the information of the committee, if people want reading material over the summer, there is a book which deals with the idea of children and sexual abuse and it is called, Hidden Victims: The Sexual Abuse of Children. It talks about heterosexuals and homosexuals and the whole situation, and it is very informative because it deals with all those kinds of questions about when your sexuality is set, how much influence peers and other people can have.

If anyone wants to read it, I have it, if you want to borrow from me.

Mr. Brandt: I wanted to get back to the question I posed to the earlier speaker with respect to the demonstration that took place. My understanding is that the reason for that demonstration was the problem the gay community had with respect to police raids on the bathhouses in Toronto, that there was at least some connection between the two.

If, in fact, that is the case, would you not come to the conclusion a great many people have, that the gay community wants rights that are not available to the heterosexual community with respect to bathhouses?

Mr. Scollard: Unfortunately, the issue of the bathhouses is not really a very high issue, in my view. I would never go to a bathhouse myself because I think, for one, you can probably pick up diseases rather easily and that is just not my way of life. Perhaps some people would like that.

But I think the issue, coming down to looking at the laws, is what is a common bawdy house? It is either where prostitution takes place, or acts of indecency take place.

Since no money actually changes hands between clients going in there, they are not actually paying somebody for sex. They are

paying their four dollars or whatever at the door to get a room, to get a towel, and it is sort of understood that there is sex inside. People are aware of that but, of course, they do not seem to be too clear on whether that is actually prostitution.

So they are looking at the other half of the argument, that what takes place in these gay bawdy houses or the steam baths is acts of indecency. Therefore, they are concluding that when two men or two women perform any sexual act together, it is indecent. That is why recently there have been a couple of raids on people houses or apartments where homosexuals are living, because it would be called a common bawdy house because acts of indecency are taking place.

Many gay people are more angry about these raids because they are implying that we, as people, are indecent. That seems to be the image coming from the courts. But it is not because of prostitution taking place. It is because the system is looking at us personally, as being indecent.

Mr. Brandt: If I may interject for a moment; in Toronto, there have been raids on common bawdy houses and that kind of thing, following which there is no demonstration by the heterosexual community. Yet, in a similar situation, where certain activities were going on between consenting adults of the same sex--and whether money changes hands or not, I think that there may be some attempt to get around the "law" as it may relate to this particular issue--the homosexual community did respond to that by way of demonstration.

11:10 a.m.

The point I am trying to make, which I tried to make with the other speaker, was that an anti-demonstration, a response from the heterosexual community, is quite predictable and that is exactly what happened. I think that is part of what the clash was all about.

Mr. Scollard: It is within our rights to peacefully demonstrate as well. However, the incidents that took place on Saturday night with violence coming into a peaceful crowd--throwing sticks and throwing rocks and actually injuring people--is where the law was broken on Saturday night.

Actually, of the six people who were arrested every one was from the demonstration. I found it strange that I witnessed 30 or 40 people, mainly males of the 16 to 24 age group, who were all rather violent and not one of them was charged with anything. Yet of the people who took part in the demonstration and ended up fighting for their own self-protection, six of those were arrested.

I think that is a little bit one-sided. I do not think the odds would come out that way by chance, that was a purposeful thing.

That is the type of frustration I am feeling with the Toronto police force; I find it hard to believe that they can be so prejudiced, but the more I see and the more incidents that

happen, I am starting to feel that is what is happening.

Mr. Stokes: I would like to ask the parliamentary assistant, Mr. Chairman, if he would make any distinction between homosexuals doing their thing in private as opposed to two consenting heterosexual adults living common law. Do you make any distinction between those two and, if so, what would that be?

Mr. Brandt: No. If you are asking me personally, I have no biases in that respect at all. I am talking about a more commercial operation, if it was a commercial operation, and the demonstration that followed the raids. I feel that those demonstrations do lead to other acts of violence that are not in the best interests of the community as a whole.

With respect to your specific question, no, I do not draw a distinction between them.

Mr. Stokes: I got from what Mr. Scollard said, he is not here defending what took place in bathhouses, he is here to defend the rights of consenting homosexuals.

Mr. Riddell: I suppose the distinction, Jack, is that one is natural and one is not.

Mr. Scollard: I would not say that.

Mr. Riddell: We are homo sapiens, which I guess is the highest order of the animal kingdom and, as a farmer, I happen to know a little bit about animals.

The Vice-Chairman: Can I interject? I think the reason for us being here--

Mr. Stokes: I would like to hear him pursue this; really, I would.

Mr. Riddell: I do not know why you are cutting us off. Damn it all, we are just responding to some of the statements that were made. If you want to stifle debate, fine. I will quit now.

The Vice-Chairman: I think the committee can discuss these things at other times. We are really here to get clarification on the presentation that is being made.

Mr. Riddell: We have the benefit of the chap who is making the presentation.

Ms. Copps: I would say that Mr. Riddell should be allowed to carry on because I think that we have an opportunity now to air some of these things. It is the first time that we have actually sat down and talked about them in the whole time of the committee. I think he should be allowed to carry on.

Mr. Scollard: I am aware of the point you are making. My father is a doctor and I am well aware of the fact that male and female results in procreation and that is how the world survives. If everyone was a homosexual 100 years ago we would not be here talking.

Mr. Riddell: That is right. That is the point I was trying to make and I was saying that is the distinction maybe Jack Stokes is looking for.

Mr. Scollard: It was just the word you used, "normal." I do not know what other word you could use, that is the most clear word, but I feel I am normal as well.

Mr. Riddell: I think I said one is natural and one is not natural. As I say, being with livestock so much of the time, I think I know what natural means.

The Vice-Chairman: I wondered what alley you were going up.

Mr. Brandt: It was an interesting one.

The Vice-Chairman: Thank you very much, Mr. Scollard, for a very good presentation.

The next private submission is by Mr. Dahn Batchelor.

Mr. Stokes: This fellow is against politicians, if we start from that basic premise.

Mr. Batchelor: I presume then you will consider my paper as being read. I am attending the committee here as a private citizen but, briefly, my background is that I am a criminologist and in 1975 I was invited to attend the United Nations Crime Conference at the UN headquarters in Geneva as a consultant, and again in 1980 at the UN Crime Conference in Caracas, dealing with the prevention of crime and the treatment of offenders. Part of my brief deals with ex-offenders which is covered by Bill 7.

There are several areas of Bill 7 I wish to deal with because I feel that there may be some important areas within the bill that need clarification.

For example, you will note that in section 4(1) of part I it says in part, "Every person has a right to equal treatment in employment without discrimination." It is my belief that the term "in employment" refers to every person who is employed. If this subsection was intended for those seeking employment, then the words "for employment" would have been more appropriate.

Based on the following observation, I have assumed that this subsection, as that is the way it is written, is addressed to those persons who are already employed and thus deals with their rights to equal treatment in their employment. Yet, the headnote or sidenote lists "employment" for that subsection. Since section 4(2) refers to harassment on the job, I am wondering if subsection 1 really refers to the right to employment.

For this reason, I recommend that section 4(1) of part I be rewritten in part as follows, "Every person has a right to equal opportunities when applying for employment without discrimination," et cetera.

We all recognize the right of everyone to receive equal

treatment while employed. This is not to say that the trainee is to get the same office space as the president of the firm, but rather he, be he white, black, green or whatever, is entitled to the same opportunities as anyone else in the firm, based on his qualifications, experience and seniority.

For this reason, I recommend that another subsection be included under section 4 and that it read as follows, "Every person who is an employee has a right to fair treatment and advancement without discrimination." It seems logical that the draftsmen of Bill 7 intended that no one could be discriminated against while they are employed, and yet in this province it happens all the time and there is nothing in Bill 7 that offers some means of preventing it.

If you read article 27.6.1 of the collective agreement of the Ontario Public Service Union you will see that it says, "Any probationary employee who is dismissed or released shall not be entitled to file a grievance." If you look at the Employment Standards Act, 1974, you will see nothing in that act which offers some form of relief to anyone who is arbitrarily dismissed who was employed for a period of time that is less than three months. In fact, that act offers nothing to anyone who is wrongfully dismissed, no matter how long he was employed, other than that he is entitled to notice or pay in lieu of notice.

Suppose, for example, that a worker refuses to agree with his racist employer that whites are superior to blacks and subsequently is fired. If he is a probationee, that is a person who was employed with the firm for less than three months, he has no protection under the Employment Standards Act. If he is a civil servant and he suspects that he is being discriminated against and he is a probationee, he has no right to file a grievance.

The proposed act does not repeal the collective agreement of the Ontario Public Service Union or the Employment Standards Act, hence this proposed act supposedly offers relief, but at the same time is nullified by the aforementioned acts with reference to probationees and those employed for a period of under three months.

The Ombudsman of Ontario said to me in a letter of December 23, 1980: "If, as you suggest, an employee is fired for changing the tint of his hair or for not addressing his employer as, 'Your Excellency,' he has a common-law remedy. He may sue his employer." I am extremely surprised and disappointed in his reply.

For example, is it practicable for a discharged employee, who is on welfare or collecting unemployment insurance benefits, to sue his former employer? How would he evaluate his loss? For one thing, he could not enter into litigation until he found another job, so what might start as a small-claims court action, could move into the realm of the county court and finally into the Supreme Court of Ontario.

If he wins his case, would he return to his former employer after already having obtained another job? If the former employer is found to have owed a certain amount of money to his former employee for wrongful dismissal, will the aggrieved party have to

take him to court again to get an order to make him pay? After taxes and the repayment of his welfare and the unemployment insurance which he has received, will it have been worth while to have sued for the balance?

It hardly seems appropriate for the former employee to institute litigation. For a man who was wrongfully discharged from a \$50,000-a-year job, that is fine; but for a man who earns only \$4 an hour, it is ludicrous.

11:20 a.m.

I wish to refer you to a case in point. An employee in Iowa USA, working at a temporary job in the fire department of Iowa City, was fired because her husband brought her baby to the station twice a day for breast-feeding. The woman took the city to court and was awarded \$2,000 back pay and returned to her job, but her legal bill was \$26,000.

Let me tell you what happened to an Ontario employee who worked for Consolidated-Bathurst Packaging Limited. He was told last November that unless he went to a dentist and got his teeth straightened, he would be fired. The employer told him that unless his teeth were fixed during his 60-day probationary period, he would be fired from his \$7.15-an-hour job. The man had 15 days left in his probationary period and was expected to pay thousands of dollars to have his teeth straightened in that period of time. He refused to obey this directive and was fired.

Here was a man who had not needed to go to a dentist in 20 years and now was ordered to do so because the employer felt that he may come into work with a swollen face and need time off as a result of it. Can you imagine this happening in Ontario? It happened. The real slap in the face came when Mrs. Crone of that company told the man that even if his teeth were fixed, she could not guarantee him his job back.

If Bill 7 comes into force, would this man be able to apply for help because he suffers from a handicap? I believe he could. If you look at the definition of handicap in part II, section 9(b)(i) it says, "'because of handicap' means for the reason that the person has or has had, or is believed to have had, any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness," et cetera.

This man has obviously suffered from a malformation of his teeth as a result of a birth defect, but the question would be raised as to whether that would normally be considered a handicap. Up to now, I would have never thought of that problem as a handicap, but the employer thought otherwise.

If the Ontario Human Rights Commission were to state that they did not consider crooked teeth as a handicap, they might very well refuse to hear the case, and yet the man was wrongfully dismissed specifically because of a so-called handicap. Even if he had been employed for a period of longer than three months, he could only turn to the Employment Standards Act for help in

obtaining pay in lieu of notice if it had been withheld. This man, like the woman in Iowa, would have had to turn to the courts for help.

In Winnipeg, a man was fired from his job because he decided to grow a beard. He worked at Safeway, stocking shelves at night. He took the employer to court. The Manitoba Court of Appeal said in its judgement, "Safeway had no right to discipline Mr. Last on the grounds of his beard." One would think that the matter would have ended right there, but it did not. The company refused to rehire him anyhow and he had to apply for a court injunction ordering the company to rehire him--more out-of-pocket expenses.

In that man's case, we have an interesting anomaly. Supposing a Quaker or a Sikh was fired by an Ontario employer because he had a beard, he could claim religious discrimination since these people grow beards for religious reasons. Now what comes up is what is commonly referred to as reverse discrimination. Another man who possesses a beard, but who is neither a Quaker nor a Sikh, may very well be turned down by the commission if he is seeking assistance from them because he could not claim religious discrimination. Hence, a Quaker and a Sikh could obtain employment with such a firm, but anyone else growing a beard could be denied employment with the firm.

There are thousands of employees in Ontario who are not members of a union and, therefore, are subject to being fired on a whim. There is nothing they can do about it. For this reason, I recommend that this committee consider an addition to Bill 7, which would read as follows, "Every person who is an employee has a right not to be wrongfully dismissed from his employment because of race, ancestry," et cetera. This form of protection could be afforded to the blind teacher who was dismissed from her school because some unruly brats put gum in her hair.

Employees have a right to be free from being subjected to answering stupid questions about their personal lives. This is extremely true in the case of applicants looking for work. For example, Canadian Blower-Canada Pumps Limited in Kitchener asked female applicants such questions as to whether or not there was bleeding from their nipples, details of their menstrual history and their sexual drives. For this reason the proposed act should include legislation that will cover such a contingency.

I therefore recommend that an addition be added to section 4 which would read thus: "No employer will require any prospective employee or employees to answer any questions pertaining to their sex life or any part of their anatomy that has no bearing on their work for that employer." Perhaps the wording needs improvement, but I think you have my drift.

The members of the United Steelworkers of America in the can industry have solved their problems about being arbitrarily dismissed without cause. The agreement they were able to get from their employers was that no one could be fired without an arbitration hearing. This applies to suspensions also. Unfortunately, nonunion employees do not have that form of protection and subsequently people like the hospital porter at North York General Hospital can be fired wrongfully.

It seems in that incident, a Pakistani hospital porter had been one of the hostages in a recent air hijacking, and as result of what he had undergone, he became quite ill. When he finally was able to return to work, he was promptly fired for being late. He was eventually rehired when the proper authorities at the hospital reviewed the situation, and I should add, after much publicity. It was ironic that his case was not reviewed earlier, but it seems that his supervisor was absent also.

I cannot help but wonder what the hospital would have done if it turned out that it was the administrator who had been the hostage. I suspect that he would have been the recipient of a homecoming party. As it was, it was a mere porter, and one from Pakistan at that. If the hospital is going to claim that the man's racial origin had nothing to do with their original decision to fire him, then they are left with only one other alternative--utter stupidity and callousness towards the rights of others.

I, too, have had the experience of being fired after returning from a holiday. I was two days late because of an air strike that left me stranded in Central America. That made no difference to my employer.

The United Steelworkers of America have signed an agreement that makes it impossible for an employee to be fired or suspended without first having his case arbitrated. This is a tremendous step towards looking after the interests of employees, and it is natural that a union could swing it. They have far better teeth than the government has. In Ontario, as elsewhere, every employee should have the right to have his suspension or firing reviewed by someone in authority who is not directly connected with the employee's company.

You cannot fathom the many reasons employees are fired. Some of the reasons are incredibly ridiculous. I remember last year being laid off, and when I applied for a job as a truck driver, I got it. A week later the general manager called me into his office and asked if it was true that I had once addressed the United Nations on the subject of terrorism. I said that I had, back in 1975. He then fired me stating that it was demeaning to have to work as a truck driver after having addressed the United Nations. He said he could never be sure when I would quit and get something better.

Subsequently I had to collect unemployment insurance for the next three months. I lost my job for being overqualified and there was not a damned thing I could do about it. No one came to my aid, not the employment standards people and not the Ombudsman.

There are thousands of people who are being fired from their jobs and no one gives a damn. Everyone has the right to work and they should not be denied a fair share of the work field because of the indifference of employers who, at best, simply do not understand the problems of their employees, and at worst, simply do not care.

This province has a moral obligation to protect all persons in the work field, for each and every one of us in the work field

contributes a small part towards making this province a better one to live in. When a fellow employee is fired unjustly, we are all affected in some manner. For one cannot take water from a lake and not expect the level of the lake to be affected.

I wish to recommend that the following be included in the new proposed act:

1. The right of every person to apply for employment without fear from discrimination.

2. The right of every person to refuse to answer questions that relate to sexual matters or very personal matters that have no bearing on the job.

3. The right of every person to advance in his vocation considering his experience, training, ability and seniority without fear from discrimination.

4. The right not to be fired unjustly.

I now wish to deal with part II 9(i)(i) and (ii) which can be found on page four of Bill 7, which reads as follows:

"(i) 'record of offences' means a conviction for, (i) an offence in respect of which a pardon has been granted under the Criminal Records Act (Canada) and has not been revoked, or (ii) an offence in respect of any provincial enactment."

11:30 a.m.

This subsection refers to a conviction. I should bring to the committee's attention that there are offences in which a person may be found guilty or have pleaded guilty, but at the same time, there is no recording of a conviction. Subsection 3 of section 662.1 of the Criminal Code says in part:

"Where a court directs under subsection 1 that the accused be discharged (absolutely or conditionally) the accused shall be deemed not to have been convicted of the offence to which he pleaded guilty or of which he was found guilty and to which the discharge relates..."

There is no mention of this in Bill 7. I feel that there should be some reference to discharges under that subsection of the Criminal Code. There are times when an offender has committed an offence but the courts have felt that he should not be punished or even have a conviction registered. For example, a man is charged with speeding under the Highway Traffic Act. The court learns that he was driving his pregnant wife to the hospital. The court gives him an absolute discharge.

Should this reflect on his ability to drive? The court would wish that it could have found him not guilty, but speeding is an offence of strict liability and no excuse, no matter how valid, will make the man innocent. The court exercises its prerogative of mercy by giving him an absolute discharge.

The same was given to the man who shot a moose out of season, a moose that would have surely killed him had he not shot it while it was charging at him. That same type of discharge was given to the prisoner who smashed his cell because the other inmates in the riot threatened to kill him when they broke open his cell. Should he be denied a job because he was convicted of committing public damage under those circumstances? I think not, and the Supreme Court of Canada felt the same way when they gave him an absolute discharge.

Another person may have a drinking problem, and in a drunken stupor, wander into a store and later be found in the store after it is closed. If he is arrested and charged with break and enter and the court concludes that he really did not intend to steal anything, the court will still find him guilty if it is convinced he broke into the store, but at the same time, give him a conditional discharge and place him on probation for a year.

When his probation is finished, and if he has solved his drinking problem, he may be turned down for a job in a department store because someone says he was convicted of breaking into one. It must be remembered that once he is given a discharge, be it absolute or conditional, he does not have a conviction and therefore, in my opinion, he should not have to place that information on his application form or be fired when the employer learns about it.

The bill states that a man's record should not be a bar to employment if he has a pardon. Why should he have a pardon? For one thing, there are thousands of people in Ontario who were convicted of minor offences 20 and 30 years ago and have not applied for a pardon. Why should they be punished now simply because they have not applied for a pardon? No one is under any legal obligation to apply for one, and they simply do not want the RCMP contacting their neighbours. Neighbours talk and the damage done exceeds the need for the pardon.

Further, suppose a man committed a minor offence years ago and is now charged with another one, only this time he is innocent. He may have to wait a year before he can have his trial and meanwhile, he cannot apply for a pardon while awaiting trial on another matter.

I know of a man who had a conviction for an offence 19 years ago and a minor offence conviction in 1979 for an offence committed in 1978. He appealed and has been waiting two years for his appeal to be heard, and subsequently cannot be pardoned until his appeal is heard. If he is found guilty again, he must wait another two years after the decision of the appeal before applying for a pardon.

Thus, if he had his appeal heard today and was found guilty again, it would not be until 1983 before he would get a pardon. This means that because the man refused to obey a police officer by walking directly to his car instead of walking to it in another direction which would have taken him an hour, the man must wait a total of six years from the time the offence in 1978 was committed, and a total of 21 years from the time his first offence was committed in 1962 before he can apply for a pardon.

Is it morally right to deny this man employment under these circumstances? I think not, but Bill 7 implies that unless he has a pardon, he cannot claim discrimination and thus he can be denied work. I strongly urge this committee to strike out the conditions of a pardon as being a requisite to having the right to work.

If the man is a convicted rapist, he has the right to work even among women. This was decided years ago in the Supreme Court of Ontario. An offender from prison has paid his debt and no one has the right to exact more measure from the man. Just because a man has not applied for a pardon does not mean that he is a criminal. Unless it is proved that he is a criminal, he should have the right to work.

If this committee is under the impression that a person seeking a pardon is thoroughly investigated, put this out of your mind. The investigation is cursory, to say the least, because of the thousands of applications that must be processed every year.

For example, there are private investigators with criminal records in Ontario who were more thoroughly investigated by the OPP than persons applying for pardons; and those private investigators were given their licences. Does this mean that because they did not apply for the pardons they are less trustworthy? I think not.

I do not think that a person's criminal record should be held against him. He must show society that he can be trusted again. He cannot do this—if he can be denied employment simply because he has a criminal record. If the government insists that every person with a criminal record must apply for a pardon to prove that he is not a criminal, then this government is very naive. Just because the National Parole Board concludes that the applicant for a pardon is worthy of one, this does not mean that the applicant is living a crime-free life. What it means simply is that the police, in their cursory investigation, cannot prove the man is a criminal.

The employer must take his chance like everyone else when deciding to hire an ex-convict. You make your decisions based on your intuition which you have acquired from experience. When I conduct group counselling sessions at the Toronto West Detention Centre I advise the prisoners that when they are released they should keep their records to themselves.

If the employer wants to break the law by acquiring the record from the police, which is illegal, let him incur the risk. I use the word "risk" correctly, because the Police Act of Ontario forbids any employee of a police force from divulging information about a person's criminal record to anyone. Therefore, if an employer contacts a police source and requests information about a person's criminal record, and even information as to whether or not a prospective employee has a criminal background, and that police source agrees to check the applicant out, both are guilty of a crime. They should be charged with conspiracy.

Section 423.2 of the Criminal Code states, "Everyone who conspires with anyone to effect an unlawful purpose is guilty of an indictable offence." The employer would have to divulge the

name of his source, otherwise he could not state that his prospective employee had a criminal record because such a statement would be hearsay.

Bill 7 seems to lend credence to the premise that it is correct for an employer to ask a police source for information about a person's criminal background. There are other ways in which he may be able to ascertain such information. The newspapers report cases if the cases are important enough. The credit bureaus sometimes have that information, providing the record does not go back further than seven years. The applicant could be on parole, and the applicant's previous employers may have that information. So long as he stays away from the police sources, he is within his rights to make inquiries.

If an employee has lied on his application about his criminal record, the employer cannot fire that employee for that reason. As mentioned earlier, a rapist, after serving his time in prison, had a job in a factory in which he was working among women. The employer found out about his criminal record several months later and fired the man. The Supreme Court of Ontario ruled that even though the man had lied on his application for the job, his right to seek and obtain work was more important than lying about a criminal record. On that point, I must agree with the court's decision.

I wish to deal very briefly with another point. In part II, section 9(b)(iv), the proposed act deals with a mental disorder. Bill 7 is written in a manner that clearly implies that anyone with a mental disorder has a right to employment. On this I agree, but the problem is where can he work?

A number of years ago, a man killed someone and was found not guilty by reason of insanity. He was placed in an Alberta mental hospital. Years later, he was considered safe to release and the authorities found him a job on a farm. Several months later, he murdered the farmer's wife. The farmer sued the government for not telling him about the man's past. He said that had he known, he never would have hired the man as a farmhand.

There was a case, a number of years ago, where a man went to the factory where he worked and shot quite a number of fellow employees to death. Suppose he is released from the mental hospital and applies for his old job back, and suppose he is qualified for the job. Would the employer be wrong in refusing to hire him? I think not. If you were one of the employees who had been shot and you lived, how would you feel if you learned that because of this proposed act, the employer had to rehire the man and that man was going to be working right next to you?

If this bill intends to protect those with mental illness, then the bill should be rewritten in such a manner that it also protects other people. Unfortunately, I do not have an answer for this problem as time has prohibited me from looking into it further. But if there is no answer, then I suggest this part of the bill be removed until there is an answer.

Mr. Chairman: Thank you very much, Mr. Batchelor, for your presentation. Are there any questions?

Mr. Stokes: Yes. I would like to ask Mr. Batchelor a question. I see you have "C Crim." after your name. What are your qualifications and what is your background?

11:40 a.m.

Mr. Batchelor: I studied criminology at the University of Toronto from 1971 until 1974 and graduated with a certificate in criminology. Then I went back and did a post-graduate course at the crime lab bureau, that is, the Centre for Forensic Sciences at the Solicitor General's department.

Mr. Stokes: You mention there is no protection in the Employment Standards Act for a probationary employee and he can be dismissed in some cases within the three-month probationary period and in others it goes as much as a year.

Mr. Batchelor: Yes.

Mr. Stokes: Do you not think an employer has the right to a reasonable period of time in which to make an assessment as to whether or not a person is qualified for the job he was hired to do? Would you remove that discretionary period to give the employer an opportunity to make that assessment?

Mr. Batchelor: No, Mr. Stokes, I would not. I recognize the need of the employer to be able to assess his employee. I also recognize the fact that the employee is hired by the employer and, presumably, the employer has done some form of investigation into his background.

He may find that the man simply does not have the qualifications. He has tried him out and it is not working. I am also mindful of the fact that there are ways in which he can be dismissed, but at least if he has made the effort and is doing an honest day's work, I do not like the idea that he is simply called into the office and let go, just like that.

I think they have to consider damages. When I say damages, I am talking about the fact that this man may, for example, have moved all the way from Vancouver to Toronto. Now he has been there for two and a half months and the employer says, "I am sorry, but I am going to let you go."

There are some damages involved here. The employer brought the man out and he had the opportunity to check him out. If he was wrong in his own judgement, I do not think the man should suffer. I think the man should be let go, but I think there would have to be some form of damages paid, either pay for him to go back to Vancouver or something. But just do not drop him there and say, "You are on your own."

Mr. Stokes: There was one other thing here. Your pages are not numbered.

Mr. Batchelor: I am sorry.

Mr. Stokes: You say, "No employer will require any prospective employee or employee to answer any questions

pertaining to their sex life nor any part of their anatomy that has no bearing on their work for that employer." Do you find that is prevalent, or do you think they are isolated cases?

Mr. Batchelor: No, I know of a newspaper article which went into some detail about this. As a matter of fact, I understand a Mr. Elgie, who is a senior human rights official, looked into this problem.

Mr. Chairman: He certainly is senior.

Mr. Brandt: He is the minister.

Mr. Batchelor: I would think that he is senior, yes.

What I am getting is that the problem exists. When you make enough laws, laws are based on what we understand of the problems which exist. Unfortunately, we find out after the law has been made new problems come in which we did not anticipate.

If there is only one problem like this which has happened in Ontario, I suggest that the committee should be prepared for another one. Another one might come in. We do know of one case where it happened. There may be others, but this one definitely did happen.

Mr. Stokes: That is all I have, Mr. Chairman.

Mr. Chairman: Thank you, Mr. Stokes. Thank you very much, Mr. Batchelor, for appearing before us and making your views known to us.

I would like to introduce to the committee Merike Madisso. She will be collating for us the briefs as they pertain to each individual clause. We are also going to ask her to reference the code to alert the committee members which section is automatically affected.

Ms. Madisso: I have a number of requests. In addition to those, I will tell you that the plan is that you will be receiving papers over the course of the summer on a number of areas the members have expressed an interest in in relation to the briefs that have arisen. Most of them are legal areas because that is my training. I am a lawyer.

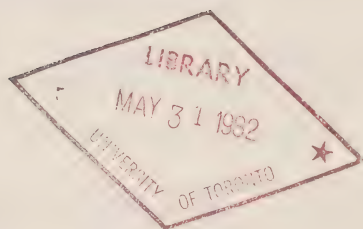
If there is anything else that has struck anyone in terms of the presentations that have been made, in terms of sections of the code or issues, or whatever, please feel free to contact me in research services in the legislative library and we can look after those concerns for you too and do the research for you.

Once you get these papers, if anything arises that you are interested in and want to get back to me about, please do that and I will follow through. Mid-August is what we are aiming for.

Mr. Chairman: We will adjourn until 8 p.m. tomorrow in room No. 151.

The committee adjourned at 11:47 a.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

THE HUMAN RIGHTS CODE

THURSDAY, JUNE 25, 1981

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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From the Ministry of Labour:
Brandt, A. S., Parliamentary Assistant

Witnesses:
Wainberg, M., Member, Urban Alliance on Race Relations

From The Child in the City program:
Andrews, H., Director
Barnhorst, S. S., Research Co-ordinator
Hill, F., Research Organizer

From the Ontario Federation of Labour:
Foucault, A., Programs Co-ordinator
Hershkovitz, A., Chairman, Human Rights Committee
Lenkinski, L., Executive Assistant
Macleod, C., Human Rights Director
Meagher, T., Secretary-Treasurer
O'Flynn, S., Vice-President and Co-Chairman, Human Rights Committee

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, June 25, 1981

The committee met at 8:10 p.m. in room No. 151

THE HUMAN RIGHTS CODE
(continued)

Resuming consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario.

Mr. Chairman: I call the meeting to order.

Mr. Meagher: Mr. Chairman, we are in your hands as to whether you would like us to proceed. The brief we have is rather short. It is about five pages. Would you like me to read it or would you rather not?

Mr. Chairman: Mr. Meagher, we have scheduled approximately a half an hour for each group. I would suggest, if you wish, you could highlight it. Then if there are any questions by members of the committee have, as far as I understand it, that would allow the committee a little more time to ask questions.

Mr. Meagher: Then perhaps I could read it.

Honourable members, the Ontario Federation of Labour, representing 850,000 working people in this province, is pleased to have this opportunity to present a response to the proposed amendments to the Ontario Human Rights Code. Bill 7, we agree, is a serious attempt to revise and extend the protection of human rights.

As drafted, it incorporates many of the earlier recommendations put forward by the Ontario Federation of Labour and the Canadian Labour Congress. Over the years we have asked that the bill expand its coverage to include the rights of the physically disabled in the areas of employment and accommodation, the rights of people living in common-law relationships, the rights of welfare recipients to accommodation, and protection for people between the ages of 18 to 65 against discrimination. We see that this has happened and we are heartened.

Of particular note, moreover, we applaud the provision for the primacy of the code over all other legislation. That the commission now has the power to recommend affirmative action plans, that hearings by boards of inquiry will be expedited, that contract compliance will be implemented are all bricks in the strong human rights foundation we want to see established in our province. But the foundation is only strong if no gaps exist and the best mortar is utilized. That is why we are appearing here today. We want to address what we perceive to be some of the gaps.

When we refer to mortar, we want to comment on the ability of the commission to carry out its mandate. First, can the

commission be effective if it does not have the staff and resources to do its job? Human rights are nothing but ink on paper unless they can be monitored, investigated, protected and publicized. This takes people and money. Will the commission have this or will the commission have nothing more than 17 more pages of legislation that it can do little with?

Secondly, will the commission be a body that is perceived by the public to indulge in lengthy, complaint-by-complaint individual cases? In secret at that. The backlog of cases is, on the other hand, no secret; neither is the negative public image spawned by the long waits and red tape.

Will the commission be empowered to speak out loud on its own initiative on racial and other human rights issues? It should be clear to all of us here that presently a single incident of discrimination that comes to the attention of the commission is no doubt part of a widespread and general problem that must be addressed on the same broad basis.

These are our recommendations:

1. Contract compliance: The Ontario Federation of Labour is pleased by the sanctions in Bill 7 against discrimination in employment and we look forward to the time the commission will have the resources to monitor contract compliance. Without specific legislation, however, like that contained in the U.S. Federal Contract Compliance Manual, in which contractors are required to demonstrate that they offer equal opportunities to disadvantaged groups, contract compliance will remain a general conception without teeth.

Recommendation: We recommend that the Human Rights Code provide for contract compliance. As a condition for obtaining a government contract, private sector employers must undertake a number of specific good-faith measures which are designed to broaden the participation of disadvantaged peoples in their business operations.

2. Independence of the commission: We believe that human rights policy, such as race relations, should be the responsibility of the government as a whole.

Recommendation: We recommend that the human rights commission be an autonomous agency independent of the Ministry of Labour or any other government ministry.

3. Decentralized access to the commission: People throughout the province must have easy access to the resources of the commission. At present, interaction between the commission, local politicians, public officials and citizens is seriously hampered by the lack of access.

Recommendation: We recommend that the human rights commission must operate as a community-based service so its presence can be felt locally by all the people of Ontario and so that it can respond to local issues as they arise.

4. Affirmative action: To end the historical and systematic

discrimination in employment, it is important that the commission be empowered to make affirmative action programs a requirement in cases where they are deemed necessary. It is not enough to suggest or recommend special programs.

Recommendation: Section 38 must be made more explicit. It should allow a board of inquiry to order special programs to relieve disadvantages of historic origin. This would place relief on disadvantages that are historically based on the same footing as some recent human rights infringements. It would provide a concrete incentive to employers to provide special programs voluntarily. Employers would be induced to adopt special programs as a commission settlement.

5. Sexual orientation: Recommendation: The term "sexual orientation" should be included in the code as one of the prohibited grounds of discrimination.

6. Political activity: Recommendation: Political activity should be included in the code as one of the prohibited grounds of discrimination.

7. Class action complaints: To date the commission has been ineffective as an advocate for citizens who have been victimized by systematic discrimination. Class action would be cheaper, and certainly more convenient for citizens, and would permit the existence of systematic discrimination to be more clearly illuminated.

Recommendation: Class action by citizens for similar case discrimination must be permitted under the code.

8. Discrimination against families in accommodation: Recommendation: In order to prevent discrimination against families with children in accommodation, section 19(4) must be deleted from the proposed amendments.

9. Genetic screening: Genetic screening and all exclusionary policies based on theories of genetic susceptibility discriminate against working people. This process keeps people out of certain areas and allows employers to avoid cleaning up hazardous work situations.

Recommendation: Genetic screening as a prerequisite for employment must be prohibited under the Human Rights Code.

All of which is respectfully submitted, Mr. Chairman. We will endeavour to answer any questions that members of the committee may have.

Mr. J. M. Johnson: Mr. Meagher, I wonder if you could clarify for me this statement on page three: "As a condition for obtaining a government contract, private sector employers must undertake a number of specific good-faith measures." What are you talking about?

Mr. Meagher: If there had been, for example, a firm that had not been making any move to hire women or minority groups or whatever the case may be, we are saying that if they were going to

receive a government contract, then they would undertake to open up some of these areas to people in the past they had not done.

Mr. J .M. Johnson: I fail to understand. Do you have a list of employers in the private sector that have this record? Do we not treat everybody the same until we find there is some problem?

Mr. Meagher: I think we have to go beyond finding out where there is a problem. There also has to be a certain amount of encouragement. For example, I use the case of sex discrimination with women in nontraditional roles. We are not used to seeing women in many capacities. It does not mean that they are incapable of performing those kinds of tasks if they were given the opportunity.

We know that many native people in this country, for example, do not have opportunities for employment to the extent they should have. The same holds true of other visible minorities. There has to be more than just to say that they do not discriminate. They must be actively doing something to have these people become part of the mainstream.

Mr. J. M. Johnson: We also had presentations saying that we should not consider the age of 65 as the retirement age.

Mr. Meagher: In so far as that aspect of it goes, I would say that for people who would not like to retire at 65 the argument could be made that they have rights. Conversely, you could also say that people who do want to retire at the age of 65 should enjoy that privilege as well.

Mr. J. M. Johnson: I think we would all agree with that.

Mr. Meagher: I think where part of the problem on that one comes from is that people fear that if they remove the age 65, then people may be compelled to go beyond that before their pensions would be available to them.

Mr. J. M. Johnson: Could we look at page four where you say: "Section 38 must be more explicit. It should allow a board of inquiry to order special programs to relieve disadvantages of historic origins." What do you mean by that?

8:20 p.m.

Mr. Meagher: If you were going to northern Ontario, you could find situations where there is construction that is being carried out in that part of our province and that there are many people who go from the south of Ontario to perform jobs that could very well be carried on by the native people who live in the area, but they have never had an opportunity.

We know that they had an experience in Manitoba where there was affirmative action with the construction companies and the government of Manitoba was working in close co-operation with labour and with management to open up certain jobs for the native people in the northern part of the province, and they were carrying on construction jobs. We tried to get the same thing

started here in Ontario and I am sorry to say we were not successful.

Mr. J. M. Johnson: Then at the bottom of page four you say, "Political activity should be included in the code as one of the prohibited grounds of discrimination." Ku Klux Klan?

Mr. Meagher: No. What we are talking about there is that there are a significant number of people in Ontario who do not have the same degree of political freedom that I have, for example.

Mr. J. M. Johnson: But who is going to make the decision?

Mr. Meagher: I think the decision would not be too difficult to make. I am talking of people who are employed in the civil service. I think you could recognize that there are people in certain capacities, deputy ministers, assistant deputy ministers and so on, that may not be able to publicly go out and speak against the government. But it would seem to me that for people who work--anyone within the bargaining unit, I would put it that way, of the Ontario Public Service Employees Union--I just cannot see any reason why a filing clerk or someone who works for the highways and those kinds of jobs should not be allowed to participate in political activities, to be a member of a party, be a candidate, or do whatever he wants.

Mr. Riddell: As a point of order, did the NDP know this presentation was going to be made?

Mr. Chairman: They ought to have. It certainly was on the Order Paper.

Mr. Brandt: Are you suggesting they are not interested in this presentation?

Mr. Riddell: Well, they are rather conspicuous by their absence.

Mr. Brandt: I noticed that as well.

Mr. Riddell: I did not want them to be left out.

Mr. Stevenson: I wanted some clarification on genetic screening, your last point. I understand some of the things that you may wish to include there, but I am not sure I totally understand everything you might have in mind.

Mr. Meagher: I think that what we are talking about there are certain health records. There are certain people who are more susceptible to certain things. Hazards in the work place have a stronger effect, or at least the theory has it, on some people than it does on others. They began to screen those people out away from the jobs. We say that they should not be screening the people out. They should be cleaning up the work place.

Mr. Stevenson: You are talking exclusively about health situations then basically?

Mr. Meagher: Primarily, that is where it arises from and that is where we have been talking about it. I think you are going to hear a great deal more about this as the hearings in the occupational health and safety area go on and the designated substances are being discussed. I think it is fair to say that most of the experts in North America are going to be at those hearings.

Mr. Lane: Going back to the point that Mr. Johnson made regarding affirmative action, I am from northern Ontario and have not had any difficulty with firms coming in from the south to do a road program or whatever not hiring native people. I always make it a habit to congratulate the person who gets the tender and suggest that there are people in my area who would like to have work, and basically they provide it.

I have never really experienced what you are suggesting happens there. No doubt they do bring a certain amount of people from the south, but basically they have been very co-operative as far as I have been concerned.

One reason we do not see native people working on some of these jobs is that they are more comfortable working in logging camps or other types of work. For example, I have been a businessman for many years and have advertised for secretarial help of whatever and I have never yet had an application from a native person.

Mr. Meagher: Mr. Lane, I think that is the point. That is what affirmative action is all about. Native people, like many others in certain other jobs, are not out seeking those jobs because they have no reason to believe that the jobs are really available for them. If you were to look in Metropolitan Toronto how many firefighters do you see who are black people, for instance?

I think most black people do not make applications to become firefighters because they just do not feel that those jobs are available to them. I would say in that kind of a situation the fire department has a responsibility to go out into the black community, to reach their newspapers or television programs or whatever means there are to communicate with those people, and tell them that not only can they approach the job on an equal basis with others because the law says so, but to invite them to come in.

I know of situations in northern Ontario where you could not accuse employers of discriminating against native people, but the fact of the matter is that they have never made them feel welcome. That is what we are talking about in affirmative action. It is not enough that they just do not discriminate, but we think they should take the extra step and go out and encourage people to come in.

Mr. Lane: I can appreciate what you are saying, but it is really difficult. If I put an ad in the paper for a secretary and get six applications, they are all from white girls. If I go to the reserve and try to get a native person to take the job

at is really difficult because I have had a response to my ad
no response from native people.

They vote for me. Why would they not work for me? I have
ht reserves in my riding. I am serious about this. I think they
e more comfortable in certain jobs than they are at others, and
at is why they apply for certain jobs in sawmills and lumber and
nber camps or in fishing and trapping.

Mr. Meagher: I would go a step further, Mr. Lane, and
y we, as a society, have a responsibility to make them feel as
nfortable in another job as they would working in a sawmill.

Mr. Lane: Maybe it is an educational problem because
ey just do not make applications for that job, I can assure you.
ybe they should, but they do not. In many cases, they would be
cepted if they did. I am sure of that. Certainly I would have no
jection to hiring a native person. As a matter of fact, I would
quite happy to, but the applications don't just come forward
r some reason or another. Maybe it is an educational problem.

Mr. HersHKovitz: May I just add to this? I would like to
k Mr. Lane if he has ever gone out to the reserve or the
community where the native people are and met with the leaders of
e group to discuss the problem with them?

Mr. Lane: I do it all the time. I have 26 white
unicipalities and eight reserves in my riding. I meet with town
uncils and band councils all the time and I treat them exactly
e same way.

Mr. HersHKovitz: This is exactly what we mean in so far
affirmative action is concerned. We expect management to do
ese various things, to create a climate.

Mr. Lane: It just seems to me that we are saying here
at maybe it is not being done, but in my case I think it is
ing done.

Mr. HersHKovitz: I would be so bold as to say that it is
ertainly not universally applicable. I accept what you say, Mr.
ne, that you may do it. It is not something that is going on all
er Ontario.

Mr. Lane: It bothers me to see Indian girls working in
e kitchens of the hospital and cleaning the park or the lodge or
omething, rather than working in the bank or the store, but the
ct that they never apply is really why they are not there. Maybe
ey should have more confidence that they could get the job if
ey did apply.

Mr. HersHKovitz: Mr. Chairman, I would like to point out
that we do not want to isolate the issue just to northern Ontario.
e are talking about everywhere.

In the city of Toronto and everywhere else, management
ould go out to the black communities and so on and start a human
elations approach to these things and try to recruit people.

Management does an affirmative program on the campuses. They go out and try to recruit and tell people what they have to offer and so on. We say this should be done in all areas.

8:30 p.m.

Ms. Macleod: Mr. Chairman, there is something I would just like to add. I know we should not talk only about the north but maybe this is a good example to work with.

When we talk about special measures for affirmative action it could be something as simple as when you put an ad in the paper for a secretary you might say you are advertising for secretarial position and this position is open to native women and that you would entertain applications from native women.

Mr. HersHKovitz: As well as others.

Ms. Macleod: As well as others.

Mr. Lane: Would that not be discriminatory right there if I said that?

Ms. HersHKovitz: No, not if you were advertising--

Ms. Macleod: When you are talking about affirmative action, it is an extraordinary measure to redress the imbalance that is historically based, and that is exactly what we are talking about here.

There was one other thing I was going to say about the sense that people have of not being able or not feeling they can compete for jobs like that. You might also talk to the local community colleges and high schools and find out what they are doing to give guidance to young people about the kinds of career options they are choosing or the paths they are going on. If some kind of creative intervention can be taken early on, that is also part of an affirmative action program.

Mr. Lane: I think that is where our greatest opportunity really lies.

Mr. Stokes: I would like to ask, Mr. Chairman, if the would elaborate a little more fully on political activity. You said it should be included in the code as one of the prohibited grounds for discrimination. What specifically do you mean?

Mr. Meagher: We are looking primarily at people in the public service of Ontario, but it is also true in the federal public service, where people who are not in jobs that you could by any stretch of the imagination, categorize as being politically sensitive are not entitled to have the same kind of political rights that I have, for example, or be a member of a political party, or speak out on behalf of a political party, or be a candidate for a political party, or participate and so on. We think that that is ludicrous and that those basic rights should be extended to them.

Mr. Stokes: Do you have a cutoff line?

Mr. Meagher: Yes, we would not want to overdo it. I think it is right and proper where a government has a deputy minister that it should have a right to choose people who it thinks are somewhat sympathetic to the philosophy of the government. It would seem to me that as a basis for starting all those who are in a collective bargaining unit and removed from management, if you will, should have all those political freedoms. At least that is a place to start. I am sure you could even go above that, but that would be a giant step forward.

Mr. O'Flynn: That is 23 per cent of the employees of the government are excluded, so there would still be a lot of people here.

Mr. Stokes: I do not know whether, coming in late, discrimination against families with children in accommodation was discussed.

Mr. Meagher: It was not discussed.

Mr. Stokes: Would you make some exceptions there with regard to senior citizens' apartments or ones where there was a common entrance?

Mr. Meagher: I would imagine that the apartments that are built for senior citizens and designed for senior citizens have a specific purpose. That is a different kind of a situation. In those situations where they are open to the public in the broadest sense of the word, we do not think there should be discrimination against families with children.

Mr. Stokes: Thank you.

Mr. Meagher: There are a couple of points I would like to emphasize where there is not much said about here. We think that the amount of money that is allocated to human rights, the amount of resources, is totally adequate.

We would emphasize that point, that good legislation often by itself is not enough. The legislation must have an opportunity to be applied to be meaningful.

In a number of other areas there are some things that we have participated in we are aware of, the private employment agencies that have been discriminating, the real estate agencies that have been discriminating. I am not suggesting that as a first defence these people should be removed from business, but it seems to me that any agency that is found guilty of repeatedly violating the Human Rights Code should have its licence removed.

Mr. Eakins: Do you have a feeling that perhaps they are going to be understaffed in administering this?

Mr. Meagher: We know now that they are understaffed. With the expansion of the code, which would bring in other areas, they do not get a tremendous amount of money and people they are just not going to be able to make it.

The information I have now is that it is six months before

they have an opportunity to get around to your case. It is not because the people in the human rights commission are not working hard. They have a staff, many of whom I know personally, of very dedicated people, but the work is just too much and it does not have the priority that it should enjoy.

Mr. Eakins: That is a good point.

Mr. Brandt: That is not the first time that particular point has been raised in the presentations that we have had. I think the Minister of Labour (Mr. Elgie) intends, with the passage of the new bill, that there will be an expansion of the staff and the resources that are available for that particular function.

We recognize that there is a backlog and that there is some frustration at the moment. I am parliamentary assistant to the Minister of Labour, who could not be here tonight. I can only suggest to you that we recognize that problem. We appreciate your pointing it out and we intend to address it.

Mr. Meagher: One other final point and I will have got all my prejudices off my chest, and that is the idea that the commission should be more visible in the community.

We think that it should truly be an open, storefront operation in any areas where they know that there may have been a history of incidents. The commission should be out there and should be visible. People should have access at all levels. It should carry on vitally and vigorously in the communities, so that people they know they are around.

Mr. Stokes: Mr. Meagher, you and Mr. Lane were engaged in a conversation with regard to the hiring of native people. Since you were talking about people in the north, what kind of solution would you propose to assist native people to get involved in woodworking operations where there is conflict with the Lumber and Sawmill Workers Union?

Mr. Meagher: Do they have a conflict with the Lumber and Sawmill Workers Union? When we were talking about it initially--I must admit this was several years ago when we were trying to do something about this matter--there was a significant number of native people who were members of the Lumber and Sawmill Workers Union.

Mr. Stokes: Some of them are.

Mr. Meagher: There was another group that was into private contracting, co-ops I believe, and the Lumber and Sawmill Workers Union made certain changes in their collective agreement so that they would not have exclusive rights to supplying the wood to the mills and allowed for a certain amount to come from what was being cut by the native people. I am not aware of what present difficulties there are between the native people and the Lumber and Sawmill Workers Union.

Mr. Stokes: It is a problem and obviously you are not aware of it.

Mr. Chairman: Thank you very much, Mr. Meagher and members of the federation, for making this presentation to us. I assure you that the committee will bear your recommendations in mind when we get into the study of the bill.

Next we have the Urban Alliance on Race Relations, presented by Mark Wainberg.

10 p.m.

Mr. Wainberg: I believe the committee members have reviewed the Urban Alliance's brief.

Mr. Chairman, members of the committee, my name is Mark Wainberg. I am the chairman of the legislation committee of the Urban Alliance on Race Relations.

The Urban Alliance on Race Relations is a nonprofit organization made up of volunteers from all walks of life. It is dedicated to building and preserving racial harmony in Toronto. The Urban Alliance was formed in July 1975 to promote a stable and healthy multiracial environment in the community.

I would like to read the brief, if I have time to do that. Many committee members would like to interrupt me, feel free to do so.

The Urban Alliance on Race Relations is very encouraged to see, at long last, the government of Ontario introduce a bill which proposes many important amendments to the Human Rights Code. The people of this province have waited five years for some of the important revisions that are contained in this bill. Many of the recommendations made by the Urban Alliance in their recent brief, submitted to the government of Ontario in November 1980, have been included. However, in our view there are still many needed changes which are not dealt with by this bill.

1. Faster processing of complaints: We commend the efforts of the new code to expedite hearings and decisions of the boards of inquiry. For example, section 36(1) provides that a hearing of a board of inquiry shall be commenced within 30 days after the date on which the members are appointed, and section 38(5) requires a board of inquiry to make its decision within 30 days after the conclusion of its hearing.

However, there is nothing to restrict the period of time between the laying of the complaint and the decision of the Commission to recommend or not to recommend the appointment of a board of inquiry. In particular, the proposed code makes no attempt to deal with the inordinate delays in the investigation process. As the members probably know, that delay is quite lengthy at the present time.

The Ontario Human Rights Commission's lengthy backlog of cases is totally unacceptable. Such a backlog results in great delay before the commission investigates a complaint. In the areas of employment and housing, a delay of up to one year between an act of discrimination and the resolution of the complaint undermines the effectiveness of the whole complaint process.

Complainants are forced to seek other housing or other employment and may lose interest in pursuing their complaint. Witnesses may become hazy in their recollections of the incident in question; they may die or they may move out of Ontario. A delay of that magnitude is clearly advantageous to landlords and employers who are guilty of acts of discrimination.

Under the proposed code the complainant has no recourse until the commission actually gets around to making a decision. We therefore recommend that a complainant be entitled, as of right, to the appointment of a board of inquiry, if the investigation has not been completed and a decision made by the commission within 90 days of the laying of the complaint.

2. Public relations, public education and research: Most of the functions enumerated in section 26 of the new code involve public relations, public education or research. In the past these functions have tended to fall by the wayside due to insufficient funding and staff. We believe that there should be statutory recognition of the importance of these functions apart from the mere enumeration of these functions in section 26.

Just as the issue of race relations has been given statutory recognition by the creation of a special race relations division, with three commissioners in charge of that division, we submit that a public relations, public education and research division be created to ensure that those functions get the attention and funding they deserve. This division should be empowered to do such things as the following.

We list in our brief the duties that we would hope that this division would have. The ones I would like to point out are:

(b) To establish branch offices of the commission in ethnic communities in order to increase the visibility of the commission and its effectiveness in dealing with community problems. The Ontario Federation of Labour mentioned the importance of that. We also consider that quite vital in order to increase the profile of the commission.

(d) To conduct spot checks of employment agencies, real estate agents, landlords and employers to uncover discriminatory practices. This has been recommended in regard to employment agencies by the Canadian Civil Liberties Association. We heartily endorse their recommendation.

3. Remedies: The new code has taken important steps in expanding the remedies available to complainants. For example, the fine that can be levied for contraventions of the act has been increased from \$1,000 for individuals and \$5,000 for corporations, to \$25,000. Boards of inquiry have been given the power to direct a party found guilty of discrimination to change its future practices.

However, we are concerned that the right of a board of inquiry to order compulsory affirmative action programs, such as job recruiting in ethnic communities, advertising job openings in ethnic newspapers, implementation of job training programs aimed at visible minorities, et cetera, is not specifically set out in

proposed code. The code allows the commission to recommend these programs, but it does not specifically authorize a board of inquiry to order them.

It will undoubtedly be argued in the future on behalf of the employer that section 38(1)(a) does not permit a board of inquiry to modify future practices of an employer to the extent of requiring it to take active steps to change the racial composition of its work force, and that a board of inquiry can only require an employer to discontinue overtly discriminatory practices. We therefore recommend that the right of a board of inquiry to order affirmative action programs should be clearly set out in the code.

We also submit that the following additional remedies should be available to complainants:

(a) A complainant should be able to lay a complaint not only on his own behalf but on the behalf of a class of persons defined by race, creed, colour, et cetera, to which that person belongs. In a remedy is essential in dealing with institutional discrimination.

For example, a black man who applies for a job with the Toronto Fire Department--an example that seems to come up quite frequently--or some other large employer and is rejected, may be unable to prove that he, personally, has been discriminated against. But if the employer in question has a disproportionately large number of white, Anglo-Saxon, Protestant employees, it may be possible to prove the existence of employment practices which are the unintended effect of screening out nonwhites.

In the case of the Toronto Fire Department, which was documented in a brief published by the Canadian Civil Liberties Association a few years ago, it was found that they used the waiting-list system, which went back several years to a period when there was not much nonwhite immigration to Canada. Because of the backlog in the waiting list, there was a lengthy time delay before a nonwhite applicant who had come to Canada, say in the late 1960s, could be considered for a position with the fire department. That is the sort of unintended discrimination that we are trying to get at.

If this type of discrimination is to be effectively dealt with, it is essential that the remedy of class complaints be available. Otherwise boards of inquiry will not be able to impose affirmative action programs in cases of institutional discrimination, since such orders could only be made after finding that the individual complainant has been discriminated against as an individual, which may be impossible to prove.

A black man who applies to the fire department would not have a chance of establishing discrimination. He is just part of the whole unintentionally discriminatory process. He, personally, is not the victim; it was the racial group to which he belongs that is the victim.

(b) Section 10 of the new code attempts to deal with this problem of unintentional institutional discrimination but should be more carefully worded if it is to be effective. The wording of

the section as it now reads is set out in the brief.

Subsection 9(c) states that "'discrimination' means differentiation resulting in an exclusion, qualification or preference." We recommend that section 10 be amended by deleting the words "would result in disqualifying a group of persons," and substituting the words, "would tend to result in discrimination against a group of persons." With its present wording, the section does not cover preferences which do not absolutely disqualify an applicant for a job but which reduce his chances of being hired.

Discrimination includes not only absolute disqualifications but also preferences. For example, the present wording would prohibit an advertisement which states, "Canadian experience required," but would not cover an advertisement stating, "Canadian experience preferred."

8:50 p.m.

The other proposed change is the addition of the words "ten to," which would make it easier for a complainant to prove this type of indirect discrimination.

(c) While we commend the increase in the maximum fine for contravention of the code to \$25,000, we believe that the right to prosecute under the present code is totally ineffective as deterrent.

We do not know of any prosecutions that have ever been brought by a complainant under section 15 of the existing code. There have been a few prosecutions, I believe by the commission for noncompliance with orders of the commission, but I do not know of any instances when a complainant has actually laid a complaint and gone to provincial court.

If a person is discriminated against he should be able to go before a justice of the peace and lay an information, just as he would be able to do if he were assaulted or robbed. However, under the new code, as well as under the existing one, a person must obtain the consent in writing of the Attorney General or the Minister of Labour, as the case may be, before he can lay an information before a justice of the peace.

I shall skip down to number four, grounds.

(a) Coverage: While we welcome the expansion of the grounds of discrimination under the new code, we believe that sexual orientation and political belief should be added as prohibited grounds of discrimination.

Sexual orientation is a prohibited ground of discrimination under the Quebec Charter of Human Rights and Freedoms. Furthermore, the preamble to the new code states that "it is public policy in Ontario to recognize that every person is equal in dignity and worth."

If that statement is really intended as public policy rather than merely as public relations, it cannot continue to be legal

a homosexual to be denied a livelihood or a place to live
ely because of his sexual orientation.

Similarly, in the area of political belief, it is
ceptable that the witchhunts and blacklisting that were so
valent under McCarthyism in the 1950s, would still be legal in
ario in the 1980s.

The provinces of Quebec, Newfoundland, Prince Edward Island,
tish Columbia and Manitoba have recognized political belief as
prohibited ground for discrimination in employment. Surely
ario should not be permitted to lag behind so many provinces in
area of human rights.

Social areas: We believe that the Ontario Human Rights Code
ould prohibit hate literature. Section 12 of the new code does
o prohibit hate literature unless it advocates or incites the
bringement of a right specifically set out in the code.

The right to be free from any matter, statement or symbol
uch exposes or tends to expose a person or class of persons to
ared, ridicule or contempt because of his, her or their race,
ed, colour, et cetera, is not recognized as a civil right under
new code.

Section 281.2, subsection 2 of the Canadian Criminal Code,
uch you will find in the appendix to the brief, prohibits the
communicating of statements, other than in private conversation,
wilfully to promote hatred against an identifiable group; but this
vision has been ineffective in controlling hate literature,
particularly in Toronto.

For example, in the case of Regina versus Siskna and
Quirter, heard by His honour Judge Coe of the county court of
the judicial district of York on March 26, 1980, the two accused
were acquitted of conspiracy to wilfully promote hatred against
whites and blacks, although the judge described some of the
literature in question as "absolute garbage."

There is an excerpt from some of the literature that has
been distributed by the Klan in the appendix to the brief, and I
recommend it to members of the committee for their reading.

If the code treated such publications in the same way as
other acts of discrimination it would not be necessary for a
complainant to prove beyond a reasonable doubt that the publishers
wilfully intended to promote hatred. It would only be necessary to
prove on the balance of probabilities that such publications
intended to expose their targets to hatred, ridicule or contempt.

This type of complaint would be much easier to prove, since
it is the state of mind of the complainant rather than the state
of mind of the defendant--who need not testify at his own
trial--that must be proven; and the standard of proof would be
much lower than in a criminal proceeding.

We therefore recommend that section 12 of the proposed code
be amended to read as follows--and we would suggest that the

underlined words be added to section 12 to cover pure hate literature which is not related to a specific social area in the code, such as employment, housing and so on.

In fact, most of the hate literature put out by the Klan and other right wing groups does not specifically say that you should not hire blacks or you should not hire Jews. It just promotes hatred and contempt against these groups and as such it would not be covered by the existing section 12.

Similar provisions are presently found in section 2(1) of the Manitoba Human Rights Act as amended, in section 14 of the Saskatchewan Human Rights Code and, with respect to telephone communications, in section 13 of the Canadian Human Rights Act. Those sections are set out in the appendix to this brief.

Section 13 of the Canadian Human Rights Act was successfully used to shut down the Western Guard phone line operated by John Ross Taylor in Toronto. The proposed amendments to section 13 would help to eliminate the racist and anti-semitic hate literature being distributed by the Ku Klux Klan in the schools and door-to-door in Toronto, and the insulting articles and jokes printed in the University of Toronto engineering school newspaper which can only be described as hate literature against women, to name just two examples. There are a couple of articles about the Toike Oike, the engineering newspaper, in the appendix.

The Ontario Human Rights Commission was quite concerned about the articles in the engineering newspaper, but they felt there was nothing that they could do about it under the existing legislation, which is true.

5. Miscellaneous: We also recommend the following amendments to the new code.

(a) The definition of services in paragraph 9(j) should be amended to clarify that provincial and municipal government services are included. There is some doubt under the existing code whether the police are covered by the code. There is some doubt whether the police fall under the heading of services and I think that should be clarified.

(b) We recommend that section 21(6)(c) be amended to make it clear that ordinary domestic servants are not included in that exception. So we are recommending that if you are talking about a companion to a private person in a private home, then you are allowed to discriminate, but if it is a domestic servant who is cleaning the house and so on, you should not be allowed to discriminate.

(c) We recommend that section 34 of the new code should be amended to permit an oral application for reconsideration. These applications for reconsideration by the commission now have to be in writing under the proposed code. This would not only assist complainants who have poor writing skills, but would also afford to the complainant a fairer and more effective opportunity to change the commission's original decision.

(d) We recommend that the code be amended to permit

complainant to bring a civil action in any court of competent jurisdiction to enforce the rights under part I of the new code. A person should be permitted to bring a civil action, either as an alternative to laying a complaint under the code, or after the commission decides not to deal with a complaint laid under the code. We believe that a complainant should have the same access to civil courts to redress an act of discrimination as he or she would have in a case of assault or in a case of defamation.

Just this week the Supreme Court of Canada decided, in the case of Bhadauria versus Seneca College, that the present Ontario Human Rights Code does not permit lawsuits to be brought in the ordinary civil courts on the grounds of discrimination. The right of a complainant to sue in the civil courts would have the advantage of giving a complainant his day in court after the commission decides not to recommend the appointment of a board of inquiry and would also relieve some of the pressure on the commission by allowing complainants to bypass the commission from the outset.

Thank you for considering our submissions. I should add that there is an article from the Toronto Star on the Bhadauria case which you will find in the appendix.

Mr. Stevenson: Some of the groups that have been here with submissions have made a difference between an affirmative action program and an affirmative opportunity program. In part of your brief here you seem to be making a very strong case for going forward and actively getting involved in other areas; it seems to be a different sort of thing, more like an affirmative opportunity. Do you see a distinction in the two areas there?

Mr. Wainberg: I have not heard that distinction made. I have heard a distinction made between quotas and affirmative action. I know that there is a lot of opposition to quotas, but we are proposing sort of persuasive measures by advertising in ethnic communities and so on, because that will not meet the objections that it is reverse discrimination.

A.M.

Mr. J. M. Johnson: On page two, paragraph 2(d): "To conduct spot checks of employment agencies, real estate agents, landlords and employers to uncover discriminatory practices."

Mr. Wainberg: That is correct. The Canadian Civil Liberties Association has been doing that informally and has had some very good briefs as a result of the statistical data they have acquired, particularly with regard to employment agencies and also real estate agencies. I think the commission should be doing that.

I have heard it objected to, that it would put the commission in a conflict-of-interest situation because they would be inciting these offences. I do not have any difficulty with that if they just do it as a means of monitoring what is happening in the private sector. The data which they obtain does not necessarily have to be used as the basis of the complaint. Firms

that are doing this can just be notified by the commission that the commission is on to them and they had better stop.

Mr. J. M. Johnson: I am at a loss. I thought we were trying to draft a bill that was fair and equitable to all parties. It seems to me it is not fair to be able to walk in on a small businessman, a landlord, without any complaint or any logical reason and just say, "We're here to do a spot check." Would you accept that? Or would the civil liberties association accept that if it related to murder or arson or many other criminal offences?

Mr. Wainberg: Certainly the police do have that power.

Mr. J. M. Johnson: I don't think they do.

Mr. Wainberg: Well, they need a warrant. They cannot do spot checks.

The Canadian Civil Liberties Association was doing spot checks by phone. They were phoning up employers and saying, for example, that they represented an American firm. They wanted to know if a particular employment agency would refer to them white employees.

I don't have any difficulty with that. I don't think it is an infringement on the privacy of the employer to be called up and asked what his policies are with regard to discrimination.

Mr. J. M. Johnson: Maybe you do not have any difficulty with it, but I certainly do. I find it extremely hard to accept that we would draft legislation that would allow someone without any reason whatsoever to walk up to, let's say, a small businessman and demand to see his records for no reason whatsoever, except that it is a spot check.

Mr. Wainberg: There is no way you can get at the intermediaries otherwise, the real estate agents and the employment agencies. If nobody does these spot checks, then the victims will never know they are being discriminated against. A black employee who works for an employment agency just does not get referred to the employers who want white people. And he is not going to know that screening process is happening unless somebody checks on a random basis. Otherwise, there is no way to stop that particular practice and the practice is quite prevalent as the Canadian Civil Liberties Association has determined.

Mr. J. M. Johnson: Your concern, of course, is to stop discrimination?

Mr. Wainberg: Certainly.

Mr. J. M. Johnson: The average person would be just as concerned to stop murder, arson, assaults, any of these other problems we have in society. Why would you not use the same rationale for that?

Mr. Wainberg: Police do spot checks on impaired drivers.

Mr. J. M. Johnson: And that has been questioned in court.

Mr. Wainberg: It has been questioned, but they can still do those spot checks; they do them under the guise of mechanical tests, but they still do them.

Mr. J. M. Johnson: I will not argue with you about it because I am not sure about the right of police to go into private places of business or to landlords and check them in certain areas of concern they might have. I just find that completely acceptable.

Another concern I have is on page seven, relating to the University of Toronto engineering school newspaper. You mention the publications they have printed, and enclose some articles in the appendix, which were not in the best taste and maybe they don't fully deserve to be discredited. I do not find fault with that.

All I am asking is how do we set up a group of people--would you call them a board of censors? How would you control the type of material that could be printed and accepted and the type of material that would not be accepted?

Mr. Wainberg: It would have to be done by the board of inquiry. It is a judgement call. Courts make judgement calls all the time; whether a person has stepped over the bounds, or has used reasonable force in defending himself. The courts have to make these judgement calls all the time.

I have no trouble with giving the board of inquiry the power to make judgement calls in the case of hate literature. I have no doubt that the Toike Oike stepped well over the line and it is not on a close judgement call. The stuff they have been putting out since I was an undergrad has been garbage and it is still garbage. It promotes hatred against women. I don't think there is any blemish with that.

With regard to your previous questions about spot checks, I am a lawyer and, of course, the Law Society of Upper Canada has the power to do spot audits of lawyers to see if they are fooling around with trust funds.

I was spot audited. A woman walked into my office and said, "I am here from the law society." I did not happen to have my books there and she said, "Get them or I will report you to the law society." I did not like it, but obviously if I were fooling around with my trust funds, that is the only way that the law society would be able to find out.

Mr. J. M. Johnson: Well, you have to judge your own kind and you know it best.

Interjection: That must take a big staff.

Mr. Eakins: You mentioned the establishment of branch offices in ethnic areas, but you did not say if it is for public relations. People generally know what the requirements are. Why would you not just say the establishment of offices so that the whole province has equal opportunity to know the message you are

trying to get across, rather than saying you would concentrate on ethnic areas? Why not the encouragement of people to know their rights? Why not get to other parts of the province to make sure that they understand the act as well? Why would you concentrate in ethnic areas?

Mr. Wainberg: If you put an office in Rosedale, you are not going to get that many people going to it.

Mr. Eakins: Should the Rosedale office not be just as concerned about nondiscrimination in various areas as any other area?

Mr. Wainberg: Certainly, but the people who are going to be alleging discrimination are the people who are covered by the ground that is set out: the nonwhite people. Women are everywhere; I don't know where you would situate an office. But it is mainly the nonwhite communities that have the most complaints about discrimination.

The offices should be in their communities rather than on the twentieth floor of 400 University Avenue. That is not a community at all. Nobody lives around there. It discourages people from using the facilities of the commission.

Mr. Eakins: Have you ever run into reverse discrimination, where people of ethnic backgrounds tend to employ their own people, for instance? Do you ever have anyone complain about that? For instance, when you go into a Chinese restaurant, they are all people of Chinese background working in that restaurant.

Mr. Wainberg: I have never run across that. I think the Chinese people would be able to do Chinese cooking more likely than--

Mr. Eakins: No, I am thinking of the employment of people of all backgrounds. It seems to me that sometimes, in order to appear fair, we must employ people of various racial backgrounds or colour to show that we are not discriminating. I am just asking if you have run into that.

Mr. Wainberg: It works both ways. No, I have not run into that, except in the famous Bakke case in California where the white medical student was complaining that he was being discriminated against because of the quota system they had there. But in Canada I am not familiar with that problem.

9:10 p.m.

Mr. Chairman: Any other questions for Mr. Wainberg?

Thank you very much, Mr. Wainberg, for your brief tonight, on behalf of the Urban Alliance on Race Relations.

The Child in the City program is represented tonight by Howard Andrews, Sherrie Barnhorst and Fred Hill. Do all members have the brief?

Mr. H. Andrews: Mr. Chairman and members of the committee, I am Howard Andrews, the director of the Child in the City program; and I have with me Sherrie Barnhorst and Dr. Fred L. L., the authors of the brief, and research co-ordinators with the program.

The Child in the City program is an interdisciplinary research program that has been in existence since 1976, based at the University of Toronto--we are nowhere near the faculty of Engineering, I would point out--and established with a grant from the Hospital for Sick Children Foundation.

The focus of the research program is unravelling the effects of practices and processes found in large urban areas, impacting on the health, the wellbeing, of children; children of all ages up to 18 years.

Since 1976, our program has been involved in over 30 basic research projects, demonstration projects and evaluations of ongoing intervention projects. These efforts have been supported by funds amounting to date to over half a million dollars in addition to the foundation grant from the Hospital for Sick Children Foundation.

All levels of government in Canada have supported these efforts, as well as private foundations and international bodies such as UNESCO.

Increasingly, in all of our research efforts to date, we have come to realize that our concern with the health and wellbeing of children has to be complemented by an understanding of the circumstances of the immediate setting in which the child lives and learns.

The most important and vital elements of this setting include the immediate family, other care providers for the child, and the quality of the housing and school environments which the child experiences on a day-to-day basis.

The functioning of the family unit is critical in this context. Concern with the health and welfare of children, then, requires a concern for the health and wellbeing of families.

By and large, and to express volumes of research as commonsensically as possible, children thrive and do well while families are thriving and doing well. Our concern, therefore, for the quality of life of today's children--tomorrow's adult citizens--requires us to examine the factors and processes which may serve to impede the abilities of families with children to function effectively.

We are in strong agreement in principle with the drafters of Bill 7 in proposing to extend the prohibited grounds of discrimination under the Ontario Human Rights Code to include family. At the same time, and bearing in mind the importance to the child and to families with children, of the immediate residential setting, we argue in our brief to this committee that, as presently proposed, Bill 7 would retain a significant vehicle for the continuation of discriminatory behaviour towards families

with children in the area of housing, in section 19(4).

Before inviting my colleagues to present this argument to you in greater detail, I should like to summarize its principal points for you.

We strongly urge the committee to recommend that section 19(4) be deleted from Bill 7. We argue that this subsection be deleted on a number of grounds.

First, equal access to housing by families with children is a human rights issue and not just a problem of housing supply. To prohibit the discrimination against families in some types of housing but not in all, violates the spirit of the preamble to Bill 7. Families with children should have a right to occupy all housing units, with the possible exception of buildings occupied solely by senior citizens and handicapped persons.

Second, we argue that in balancing the various interests at stake, the interests of families with children should not be subjugated to those of childless households and landlords. There are five components to this position.

First, we do not allow discrimination against racial, religious or certain other groups to protect people from encountering conflicting lifestyles. There is no reasonable basis for protecting most types of childless households from families with children.

Second, it is unfair to stereotype all children as noisier and more destructive than adults.

Third, individual problems caused by noisy or destructive tenants should be dealt with under the Landlord and Tenant Act.

Fourth, we do not know how many tenants in present adult-only buildings prefer to live without children.

Finally, the shortage of rental housing in Ontario, coupled with the fact that many vacant units are restricted to adults, means that families experience great difficulty in finding housing. In sum, then, the interests of families in having equal access to the housing market outweigh the interests of landlords and childless households.

We argue that allowing families equal access to housing is entirely consistent with a social policy which supports the family and family life, a social policy which the present government of this province has advocated and advanced on a number of occasions. Finally, we should like to point out that many other groups and individuals support the banning of adult-only housing, including the authors of Life Together, a report for the Ontario Human Rights Commission.

I would like now to ask Sherrie Barnhorst to begin the presentation of the arguments in our brief. Dr. Hill will take over halfway through.

Ms. Barnhorst: Mr. Chairman and members of our

mittee, in introducing Bill 7 the government has proposed to end the prohibited grounds of discrimination under the Ontario Human Rights Code to include family. This has been defined as persons in a parent and child relationship." The fact that a person has children can no longer be used to discriminate against her or her in the occupancy of residential accommodation, contracts, employment or vocational associations.

We agree that this is a justifiable extension of the prohibited grounds for discrimination. No doubt there have been instances where employers, for example, have not hired certain applicants because they believed their obligations to their children would result in less time for or dedication to their job. The government quite rightly seeks to eliminate this type of discrimination by employers.

With respect to residential accommodation too, the bill proposes to prohibit a landlord from discriminating against prospective tenants because of family. Section 19(4), however, contains an important exception. Landlords would be able to include tenants with children if both of the following conditions are met: (1) the "accommodation is in a building, or designated part of the building, that contains more than one dwelling unit served by a common entrance" and (2) "the occupancy of all the residential accommodation in the building or in the designated part of the building is restricted because of family."

The requirement that there be a common entrance means, effectively, that the exception applies only to apartment buildings. Townhouse developments, single-family dwellings and so on which are not served by a common entrance, would not fall within this exception.

The second requirement, that all the accommodation in the building or designated part be restricted because of family, means apparently that a landlord in a building which already has some tenants with children could not discriminate against prospective tenants who also have children. Thus, although the bill explicitly gives landlords in adult-only buildings the right to keep them that way, the rights of other landlords to exclude tenants because they have children would be removed.

We feel that the large loophole of adult-only apartment buildings should be closed by the deletion of section 19(4) from the bill. We would like to add that it is our understanding that Bill 7 would apply to condominiums. Although in our brief we only refer to rental units, it is our position that the same arguments which apply to prohibiting adult-only buildings also apply to prohibiting adult-only condominiums.

While we recognize that, even as it stands, the bill would to some extent reduce the discrimination against families with children, we ask that the government be consistent in its policy and allow families with children to have equal access to all dwellings, including those buildings which are at present adult-only.

The precise issue we would like to deal with is whether this is a human rights or a housing issue. In supporting this bill's

predecessor, Bill 209, last fall, Dr. Elgie, the minister responsible, acknowledged the difficulty which families with children in large urban areas have in finding accommodation.

9:20 p.m.

He stated that the government had, however, decided that this was "essentially a question of housing supply, a matter really beyond the purview of human rights legislation." More recently, in connection with Bill 7, Dr. Elgie again stated that: "It is a housing issue and should not be confused with a human rights issue. We have to respect the balance of people's rights in society and not confuse a housing problem with a human rights issue."

If that is the case, why is family included at all in the bill as a prohibited grounds of discrimination in housing? Either it is a human rights issue or it is not. It cannot logically be a human rights issue when it comes to all types of dwellings except adult-only apartment buildings, and then suddenly become a housing issue when adult-only buildings are concerned. By including family as a prohibited grounds of discrimination in housing in some situations, the government, in our view, is correctly acknowledging that discrimination on this basis is a human rights issue.

It is interesting to note that Manitoba, New Brunswick and Quebec prohibit adult-only housing. Similarly, our most recent information is that at least eight states in the US have statutes which prohibit discrimination against families with children. Federally in the US, the National Housing Act since 1950 has required landlords to certify that they do not discriminate against families with children in housing built with federally insured mortgage loans. Obviously other jurisdictions see discrimination against families with children as a human rights issue and not just a problem of housing supply.

Housing is a basic human need. To deny families equal access to all available housing is to deny families an essential human right. In our view section 19(4) violates the principle stated in the preamble to the bill, which recognizes the inherent dignity and equal and inalienable rights of all members of the human family. We also believe that section 19(4) is inconsistent with the statement of public policy contained in the preamble which states that "it is public policy in Ontario to recognize that every person is equal in dignity and worth."

Given that equal access to housing by families is a human rights issue, the next point we would like to consider is the interests at stake. In all aspects of human rights, whether we are dealing with race, sex, handicap, family or other grounds of discrimination, the legislation must balance the rights and interests of various groups in society, as Dr. Elgie said. The extension of the rights of one group necessarily reduces the rights of others. For example, by protecting racial groups against discrimination in housing, we are denying the right of a landlord to choose the tenants he wishes on racial grounds.

In the case of adult-only apartments, the groups whose interests are at stake are the present tenants of the building--and future childless tenants--prospective tenants with children, and the landlord. From his remarks in the Legislature, it is apparent that Dr. Elgie considers that, in the case of adult-only apartment buildings, the rights of the childless households are to be paramount. He spoke of what he considers the "legitimate lifestyle preferences" of those who "choose to move to accommodation where they will be with adults" and of the need to protect "an individual's rights to enjoy a quiet place to live."

We are not questioning anyone's right not to have children. Dr. Elgie said, that is their privilege. But when it comes to guaranteeing the rights of the childless to live in an environment where they will not have to tolerate the presence of children, we strike the balance differently. It is our view that when the various interests are weighed, the only just conclusion is that the rights of parents and children to occupy housing should prevail over the rights of childless households to be insulated from children.

Under both the present and proposed legislation no tenant is guaranteed the right not to have native Indians, Jews, bachelors, welfare recipients, epileptics, mental patients, Jehovah's Witnesses, and so on, living in their building. In spite of the fact that some of our citizens may prefer not to live beside these other groups because of "conflicting lifestyles," the government's position is that the rights of these groups to occupy accommodation of their choice must outweigh the rights of landlords to exclude tenants on these grounds and the rights of tenants to not live near a member of these groups.

I am thankful that we have progressed beyond the 1949 case Noble versus Wolf, where the Ontario Court of Appeal held that a restrictive covenant barring the sale of property to Jews or blacks was valid and not against public policy. Our society no longer believes that people have an unrestricted right to ensure that their neighbours be of the "same class that get along well together." Our multicultural, pluralistic society requires that we exercise tolerance for other lifestyles. Surely the family, as an important institution, deserves the same protection and respect that other groups have been given under the Human Rights Code.

What are the interests of childless households in preserving a childless environment? What is it about the "legitimate lifestyle preferences" that is at odds with the presence of children? From Dr. Elgie's comments noise would seem to be the main concern; that is, "the individual's rights to enjoy a quiet place to live." The assumption here is that all children make acceptable levels of noise.

We cannot agree with this assumption. No doubt some children make more noise than others, just as some adults are noisier than others. It is also true that some adults make more noise at times than some children; for example, young singles throwing a party, or electronics buff with his 200-watt channels. It may even be that there are proportionately more noisy children than adults. However, the fact that it may be more likely for a member of a

particular group to act in an undesirable manner does not warrant excluding every member of that group.

This is a basic principle underlying all antidiscrimination legislation. By ascribing a characteristic of some children to all children, false stereotypes are created. When people are responded to on the basis of a stereotype rather than as individuals, unjust treatment is unavoidable.

When noise is a problem, whether the disturbance is caused by an adult or child, we have very specific legislation to deal with the situation. Section 103f(1)(c) of the Landlord and Tenant Act provides that where "the conduct of the tenant or a person permitted in the residential premises by him is such that it substantially interferes with the reasonable enjoyment of the premises for all usual purposes by the landlord or other tenants...the landlord may serve on the tenant a notice of termination of the tenancy agreement..."

Similarly, other subsections of section 103f would allow the landlord to terminate the tenancy where a tenant "causes or permits undue damage;" "carries on or permits to be carried on any illegal act;" where "the safety or other bona fide and lawful right, privilege or interest of any other tenant...is or has been seriously impaired by an act or omission of the tenant;" and where "the number of persons occupying the residential premises on a continuing basis results in the contravention of health or safety standards."

We believe that the problems of noise, property damage and so on are appropriately dealt with under the Landlord and Tenant Act. This act allows for the resolution of what are individual not class, problems when they arise. It does not presume to predict that a certain class of people will be troublesome and should be penalized in advance. For there is no doubt in our mind that section 19(4) does penalize persons for having children by limiting their access to housing.

Not all tenants in adult-only buildings are as vociferous as those who have been involved in the effort to preserve their child-free buildings. A national housing study sponsored by the U.S. Department of Housing and Urban Development in 1979 found that only 20 per cent of the tenants in childless buildings said that they chose their building because no children were living there. Approximately the same percentage said they would move out if children moved into the building.

Interestingly, the study also found that only 10 per cent of the landlords who accept children without limitations felt that noisy children were a "big problem" and only 25 per cent felt that higher maintenance was a "big problem." On the other hand, 39 per cent of the landlords of adult-only buildings thought noisy children were a "big problem," and 49 per cent thought high maintenance was a "big problem" with children.

9:30 p.m.

To summarize, it appears that the concerns of landlords and tenants of childless buildings may be exaggerated. In any event

There may be a sizeable proportion of tenants of adult-only buildings who do not care if children are permitted. There may even be childless tenants who would prefer to live in an environment with children.

Dr. Hill will now present the remainder of our brief which will discuss more specifically the interests of families with children to equal access to housing and the social policy implications underlying the legislation which would legalize adult-only housing.

Dr. Hill: Ms. Barnhorst has already argued that by including "family" in the act as a prohibited ground of discrimination in the occupancy of housing, the government has acknowledged that families' access to housing is a human rights issue and not simply one of housing supply, notwithstanding Dr. Hill's statement to the contrary. Our position is that even if vacancy rates were at higher levels, adult-only housing should be allowed because the fact that one has children should not interfere with one's basic human right to occupy housing.

The argument that if there were an adequate supply of housing, discrimination in adult-only buildings would not be a problem since families could readily find accommodation does not stand up under closer scrutiny. Evidence has shown that even under high vacancy rates landlords in adult-only buildings refuse to rent to families and families would still have difficulty in finding accommodation, particularly in certain parts of the city where they may wish to locate.

Furthermore, the housing supply argument would presumably apply equally to other groups. If there were plenty of rental housing available, would particular racial, ethnic or religious groups be in need of protection under the code? Yes, because their right to occupy housing irrespective of race, ethnicity or religion must be guaranteed against the whims of a bigoted landlord. Should not the same argument apply to families, regardless of the vacancy rates prevailing at the time?

But the question of housing supply does add to the argument in favour of eliminating adult-only housing. Families have considerable difficulty in finding housing in many centres in Ontario. Vacancy rates in apartment structures of six or more units last October were at 1.5 per cent in Ontario and were only 0.5 per cent in Toronto. The fact that a significant proportion of units available are denied to families because they have children makes their search all the more difficult.

We do not believe that eliminating adult-only housing is the solution to the shortage of affordable housing in many locations in Ontario. But it is obvious that if a substantial proportion of vacant units cannot be rented by families with children, whereas virtually all vacant units can be occupied by childless households, families are in a much worse situation than those without children.

Furthermore, since single-parent families, most of which are female-headed, tend to have lower incomes than two-parent families and are therefore usually in the rental rather than the ownership

market, discrimination against families with children to discrimination against women and against the government is serious about reducing discrimination of sex and marital status therefore, it would be the coverage of "family" as a prohibited ground to include adult-only apartment buildings.

Thus, although we regard the housing supply red herring in what is basically a human rights could justify the inclusion of "family" in families throughout much of Ontario were having housing because they had children, would do we realities facing families in this province.

Dr. Elgie maintains that he has an alternative point of view expressed here because he has family of his own and has "been through the process," a Legislature. It is not clear what process he would doubt that he has been through the process rental accommodation for such a large family, that the average or low-income family can afford the experience of repeatedly being refused of having children, one would expect that he greater appreciation for the problem.

We do know something about the process with children go through when seeking rental Canadian data on this question. However, a study cited earlier found that families report substandard housing and in overcrowded conditions.

As part of that study, public service agencies invited people who had had difficulties because they had children to phone and describe

Forty-four per cent of the respondents with family or friends while they sought children. Some even reported living in vans or campsites while searching for housing. A number of other associated problems, such as quality schools and day care centres being in a preferred area; living where public is inconvenient or nonexistent, thus forcing long distances for shopping or work; not a reasonable distance of a job, which because the family earners had less time was considered desirable."

Finally, the survey found that "policies that children are destructive or unwilling to discipline their children simply undesirable tenants." We may also feel dehumanized and not part of society.

have no comparable statistics from

cause they have children. However, we can be sure that the problems are as great as, if not greater than, those experienced American families.

Ontario's vacancy rate is far lower than that in the United States. As noted earlier, the vacancy rate in Ontario last October was 1.5 per cent. Yet, when the American rate fell to an unprecedented 4.8 per cent in early 1979, a study by the US Comptroller General's office noted how the "current shortage of rental units has enabled landlords to become increasingly selective in renting" and consequently that "many landlords are renting only to white households with no children."

Even though American vacancy rates are at a level which would be a luxury for Ontario renters, the Children's Defence Fund in Washington has established a national network of some 25 organizations dedicated to ending housing discrimination against families with children. The need for ending such discrimination in Ontario must surely be greater when our vacancy rates are only a third as high as those in the United States.

Even if we accepted the government's supposition that the shortage of housing by families with children is not a matter of human rights when adult-only housing is threatened, there is no reason for families to be soothed by the housing supply argument. On the adult-only housing issue, specifically the conversion of family housing to adult-only by the termination of leases, was raised in 1975 when Toronto City Council tried to do something about it, and at that time the Minister of Housing, Mr. Irvine, testified in the Legislature that he knew families with children had a problem getting rented accommodation, but that "again we have to increase the supply is the answer to all of it."

That was six years ago, and although vacancy rates have declined considerably since then, Dr. Elgie is still repeating the same line. Why should families be expected to wait patiently for years and years for supply to supposedly solve their problems, when the evidence indicates that increased supply would not eliminate discrimination against families, and the supply situation has been deteriorating steadily in any case?

Some would argue that there is no reason for the government to ease the burden on families who are trying to find accommodation, that people who have children should be prepared to accept the fact that certain apartment buildings will be off-limits to them and reserved for childless households. After all, parenthood is one's own choice, at least in most cases. However, none of the other prohibited grounds of discrimination are also of one's own choice.

Individuals exercise choice over their marital status, race, and citizenship, and receipt of public assistance, all of which are to be prohibited grounds of discrimination in housing. The government is saying that one ought to be able to exercise choice in these areas without fear of discrimination in housing. The same ought to be true with respect to one's family composition.

Some would even go so far as to say that, in the interest of population control, we should be doing everything possible to make it more difficult to raise families so that more couples would choose to remain childless. But it is not the Ontario government's stated policy to discourage childbearing and to undermine the vitality of the family as a social institution by making family life more difficult. Quite the opposite. The government believes in the institution of the family and has repeatedly taken actions to strengthen it and has made it the focus of their social policy. The abolition of adult-only housing would be quite in keeping with its stated intention of supporting family life. In fact, we believe that section 19(4) poses a threat to the health and welfare of the family.

Even if one did not value the family as an institution, one could still support the extension of "family" in the bill to prevent adult-only apartment buildings. In fact, the protection of human rights does not require that one endorse any particular lifestyle in preference to another.

The government's wish to prevent discrimination against Catholics, Jamaicans or welfare recipients is not an endorsement of Catholicism, the Jamaican culture or life on public assistance in preference to any other religion, culture or source of livelihood. Rather, the government is saying that one's religion, origin and source of income should not be used to deny one the occupancy of residential accommodation.

Similarly, the extension of the prohibited grounds of discrimination to include "family" in all types of dwellings would not be an endorsement of parenthood over childlessness. It would simply mean that parents and childless tenants would have equal rights to occupy all residential accommodation.

Different types of households currently occupy adult-only apartment buildings. Proponents of adult-only buildings often point to the so-called empty-nesters and the elderly who, after raising their family in many cases, allegedly have earned their right to a childfree environment if they choose to live in one. One could just as well argue that, having lived with Jews or Chinese for 30 years, one ought to be able to move into a building where no Jews or Chinese would be allowed if one so desired. But most thinking people would brand such a suggestion as racist. Is it really more acceptable to exclude an age group than a racial or religious group?

The elderly, we will admit, may deserve special consideration. Many abolitionists of adult-only buildings are willing to accept this one exception. Because the elderly have special needs, they say, those among them who would prefer to live only among other elderly persons ought to be able to do so.

We are not experts in gerontology. If it could be shown that it is really in the interests of the elderly to live without children around, we would be willing to accept this exception that is, to allow buildings where all units are occupied by the elderly to continue in existence, since the elderly may be considered in some ways a disadvantaged group in society. In some instances, they may need protection not only from children but

other occupants of adult buildings whose lifestyle seriously conflicts with that of the elderly and endangers their physical and mental health. But surely the other groups who occupy adult-only buildings are not entitled to such rights to the detriment of families seeking accommodation.

Some people who argue in favour of adult-only buildings usually claim to have children's interests in mind when they argue that adult-only buildings should be retained. They maintain that many buildings are not suitable for occupancy by children. Apartment buildings are less well suited to children's needs than others.

But should it not be up to the parents to decide which of the vacant units on the market best suits their family's needs, given their financial circumstances? Parents are better judges of their family's requirements than childless tenants. Buildings which are totally unsuitable for children would presumably remain childfree. Most families with children would prefer not to live in apartment buildings at all, but some have no option. While some families end up in accommodation which is less than ideal for children, let us not fool ourselves into thinking that we are protecting children by having adult-only apartment buildings.

Another reason as to why it is in the government's interest to ban adult-only apartment buildings is that discrimination against families in the private sector adds to the demands for public housing.

A study done not in present-day Toronto where vacancies are low but in Guelph, Kitchener and Galt a few years ago, showed that many Ontario Housing Corporation tenants were in public housing as a result of their having been refused accommodation by private landlords because they had children. Since the Ontario Housing Corporation does not routinely ask its applicants whether they have been denied accommodation because of their children, we do not know for what proportion of their tenants this has been a factor in their decision to apply to OHC. But surely, the government does not wish to add to the need for public housing by allowing private landlords to act in this way.

The committee is familiar with Toronto City Council's attempt to deal with the issue of adult-only buildings and its position that the province should act to eliminate such buildings. It would simply point out that the council was urged by the Anglican, United and Roman Catholic churches and a number of other organizations, listed on page 12 of the brief, to eliminate discrimination against families with children. Many individuals also expressed their support.

The Toronto Star, which in 1976 had supported the rights of tenants to have adult-only buildings, reversed its position and advocated banning such buildings in 1979. I will not read you its editorial quoted in the brief since it makes many of the same points already made here.

The Canadian Council on Children and Youth tried to persuade the federal government to include having the care and control of children as a prohibited ground of discrimination under the

Charter of Rights which is included in the constitutional amendments currently before the Supreme Court of Canada. The Toronto Board of Education almost unanimously supports the recommendation that discrimination against children in rental accommodation be prohibited under the code. The Life Together report of the Ontario Human Rights Commission also recommends that adult-only housing be banned.

Thus, while there are some who favour the retention of the rights of adults and landlords to child-free buildings, there are many who share the views expressed here. These groups represent a large segment of Ontario's population.

In deciding whether to allow adult-only buildings, the government of Ontario is taking a stand not only on the basic human rights of families to occupy housing, but also on the kind of communities and the kind of society it wishes to see developing in this province. Andrew Cohen, former executive director of the Canadian Council on Children and Youth, summed up the attitudes which are developing in Canada as follows, and I quote from his presentation to that joint parliamentary committee:

"I think we have arrived at a bad place in society where we do not like children and we do not like people who have them. We do not want them in most of our apartment buildings; we do not want them attending many of the events that take place in our community; we do not want them in restaurants; there are other places that we do not want to see them. It is not just the children that we do not want to see, it is the parents who are with their children.

"It seems to me that this is a very short-sighted view of what a community is like. A community is made up of people who range from zero to people who are 125 years old and all the ages in between. That is biology; that is how it works."

We are not asking that human rights legislation confer any special rights on families. We are only advocating that families with children and those without children be treated equally under the law, that is, that they have equal access to all housing with the possible exception of housing for the elderly and other special needs groups. We are not asking that landlords have the right to exclude nonfamily households from their buildings so that families with children could be guaranteed that they could live only among families with children if they so wished. That would be equivalent to the privilege that some landlords in childless households are demanding and, in fact, presently enjoy.

When childless tenants say, "What about our rights to a quiet place to live?" they should be reminded that human rights legislation does not exist to guarantee the rights of one group to exclude another category of human beings from their living environment. Rather, it exists to prevent people from arbitrarily excluding other groups of people from their environment. Given this purpose, it would be ironic indeed if the government chose to embody in the Ontario Human Rights Code the right of landlords to exclude childless households to keep parents and children out of certain classes of dwellings.

Mr. Chairman: Thank you very much, Mr. Andrews, Dr. Hill, Ms. Barnhorst. We are a little over time. However, we had a session tonight and we have a bit of time. Are there any questions any of the committee members have?

Mr. Stokes: I was interested in the quote by Dr. Cohen where he said that we were in a bad place in society. We have had a number of people make representations to us along the lines that suggest on discrimination in housing for children and parents with children, but none of them was quite as comprehensive as you are in laying it out to us tonight.

10 p.m.

I have not heard anybody, including you, suggest that if we are going to keep society together, it all begins with the family. I have often heard the quote, "If there is peace and harmony in the family, there will be peace and harmony in the community and throughout the world." I do not hear anybody talking about the selfishness of having a mixed-age group in apartment buildings, in a community, in an area, in a region, that would help us remind ourselves of what society is all about.

Nobody is coming before this committee saying, "Simply because it is the right thing to do, it is the natural setting for people." You are always saying it's because you are discriminating against children. I look at it the other way around. I think having children in a condominium, having children in a flat, gives senior citizens or those who are childless for whatever reason an opportunity to experience what life is all about. Now it is not just a bed of roses, but it is life, and we might as well get used to it.

I do not hear anybody making that claim and I think it is the most legitimate claim that you can make on behalf not only of children, but society as a whole. Nobody is making that. Is there any particular reason why you are shying away from that?

Mr. H. Andrews: I cannot think of any special reasons. I am pleased to hear your comments on the matter. I can only agree with what you said. There is a good deal of information around about the advantages both to older people and to children being in contact with one another on a day-to-day basis. It strikes me that the more we are happy with the idea of ghettoizing people by age, having old people living over here in units and young people with their parents some distance apart, the less are we able to exploit the beneficial outcomes of having young people and old people interact on a regular, day-to-day basis.

Mr. Stokes: Have you ever talked to any sociologists who would agree with the position I am taking? If you have, why are these points not being made?

Mr. H. Andrews: If the hearings are still open, I will do my best to make sure they do come before you. I think there are people who are very qualified to make those kind of statements, and that argument, to you.

Mr. Stokes: The biggest kids in the world and the wisest kids in the world are grandparents of kids. I happen to

have two young grandsons and I make more noise than they do when I am around the house, I will tell you.

Mr. Lane: You make more noise here too.

Mr. Eakins: I think we should be looking for a good mix. That is something that would appeal to me personally. But when we speak of there being no discrimination anywhere, outside of perhaps some discussion on senior citizen housing, I think we have to take a look at apartment hotels.

Would you suggest then that that is an ideal place for families with children? I have an apartment, for instance, at the Sutton Place and Jack is at Manulife. Would you say that there should be no discrimination there, that this is an ideal setting for children and families?

Dr. Hill: I would imagine there are worst places in Ontario that children are living in than Sutton Place and Manulife.

Mr. Eakins: I am just thinking of the atmosphere of it being a hotel complex and a different setting.

Dr. Hill: There are children who live very close to those buildings in an Ontario Housing Corporation project. So it is presumably nothing about the area itself that is being a terrible place for children. Apartment hotels are in the transition zone between apartments and hotels. We had not really considered that.

Mr. Eakins: If you are passing into law something which says there should be no discrimination, and someone rents a couple with children accommodation at one of the apartment hotels then the management people cannot refuse a family.

Dr. Hill: I would think that would be the position we would take, that if there were ever a family wanting to move into an apartment hotel, they should not be kept out of it simply because they have children. I rather doubt that would very often occur and I would doubt too that apartments that are primarily bachelor and one-bedroom units would, even if this section were deleted from the act that we are proposing, have large numbers of children living there.

Mr. Riddell: Before we have management at Manulife here I want to say they do have children in that building.

Mr. Eakins: I have not seen any in Sutton Place.

Mr. Lane: I have to agree with Mr. Stokes. As far as I am concerned, children make the home and make the next generation too. We have to be able to accommodate children in our society.

I think that senior citizens accommodation, especially in a building that was built to accommodate senior citizens, does not really lend itself to that in any case, and probably those buildings should be left as they are. But I see no reason to preclude families. I think parents in most cases will hopefully

de where the better place for them and their children is to
e, rather than being told where they could or could not live. I
d hope that would be the way it would be.

Mr. Chairman: Any other questions?

Thank you very much for your presentation to us tonight. You
ously spent a great deal of time and thought in preparing it
we appreciate that and having you here before us.

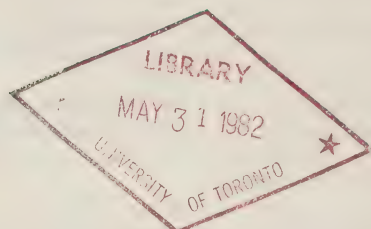
That concludes the agenda for this evening. The committee
now be in recess until Tuesday, September 8, 1981. Have a
July and August.

The committee adjourned at 9:56 p.m.

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Publications



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

THE HUMAN RIGHTS CODE

TUESDAY, SEPTEMBER 8, 1981

Morning sitting

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Substitutions:

Kolyn, A. (Lakeshore PC) for Mr. McNeil
Kennedy, R. D. (Mississauga South PC) for Mr. Lane

Clerk: Richardson, A.

From the Ministry of Labour:

DeLaurentiis, Ms. J., Executive Assistant to the Minister

Witnesses:

Argue, J., Riverdale Socio-Legal Services

From Confederation of Canadian Unions:

Dorfman, P.
Ritchie, Ms. L.

From the Association of Municipalities of Ontario:

Carroll, Mrs. M.
Hallman, J.
Yeo, J.

Also appearing:

Brandt, A. S., Parliamentary Assistant to the Minister of Labour

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday, September 8, 1981

The committee met at 10:10 a.m. in room No. 151.

THE HUMAN RIGHTS CODE
(continued)

Resuming consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario.

Mr. Chairman: I will call the meeting to order and welcome everybody back from what I am sure was a relaxing and enjoyable summer. I don't know of anybody who had anything they had to work at.

We have had a couple of months break in these proceedings and in our dealings with Bill 7 and the hearings, so I would like to suggest that we are going to have to start right on time from here on in. As you know, we have a very heavy schedule of hearings over the next few weeks and we will have to start the meetings right on time.

I have a couple of announcements or things I would like to bring you up to date on that have been brought to my attention. First, Merika Madisso and Margaret Vokes have prepared this summary, of which I believe everybody is getting a copy. This is a summary of the briefs presented to date. Merika informs me that she will have something on an almost daily basis for the committee, as best as possible, as further briefs come in.

I suggest--maybe not right now--that you start to go through that summary and direct any comments or suggestions you have to the chair or to Merika, that it is too much or not enough. I think she would appreciate any further direction that we can give her. Are there any questions or comments on that at this stage?

There is a second item you may wish to ponder or consider for some time. I am open to suggestions on it and perhaps we can come back to it later today or tomorrow. Rogers Cable TV called the chair a couple of weeks ago; in fact, they had contacted me in June when they heard rumours that we would be meeting in July and August and asked about full live cable television coverage of the hearings. When I notified them that we would not be meeting in July and August, I didn't hear anything further, but they called a couple of weeks ago and asked for permission from the committee to televise all of the hearings from here on in on their cable TV coverage.

My thoughts on it were that I would have to bring it to the committee, which I am doing now. My only reservation, which I expressed as chairman of the committee, was that they were coming in halfway through to televise part of the hearings, after having not shown much interest in the first half. For whatever complications you feel that may have, that was the main reservation that I had. I indicated to them that I would bring it

to the committee at the first meeting. I am open to suggestions. If you want to think on it and schedule 10 or 15 minutes at a further session, that would be agreeable, or perhaps you may wish to express thoughts on it now.

Ms. Copps: I would have no objection to Rogers coming in. Obviously it would have been nicer for them to have been here in the beginning, but if you follow that logic we would never have had television in the federal Parliament. If we have some opportunity to get the message of the human rights legislation out to the people of the community, I think it would be terrific. I would have no objection.

Mr. Chairman: I am not 100 per cent sure what they wanted covered. Does that make any difference? Do you wish me to try to gather more information? I got the feeling they probably would like to cover up until the House goes back, at which time they probably would not cover any more. I do not know whether that makes any difference to you or not. If there is any more information you wish gathered, I can try to do it.

Mr. J. M. Johnson: Are they using this on the late show?

Mr. R. F. Johnston: When we had the constitution committee that was the first time that I know of that they actually came in any systematic way and televised the committee. They stayed with us for a number of weeks and then went along to another committee. I think it would have been more useful if they had stayed throughout so there would have been some consistency rather than being in and out. I think it would be important, if they do come in, that they stay until the House goes back at least.

There was a lot of debate last year--I cannot remember which committee it was; I think it was procedural affairs--about the use of television in the House. There were votes taken before dissolution about what the role of TV was going to be both in committees and in the Legislature. I cannot for the life of me remember what the resolution of that was and what the status is in terms of the Speaker's office and the use of TV.

From my perspective I would like to have the cable TV people in here, if they would like to come, so that the discussion that we have and the understanding that we get from groups coming in can be translated to the public at large. I would be in favour of their coming in.

Mr. Stevenson: I would support your position. We have had a number of excellent briefs brought to us in the first half of the hearings. These people undoubtedly would have liked to have had the public exposure. They did not have the opportunity of the exposure of the cable TV, and I am not sure that it is fair to them to start now. The meetings are open. It seems to me that in the midst of things we should carry on the way we are. There may be some of those that might wish to come back if they felt that TV was going to be initiated at this stage.

Mr. Eakins: Most of the meetings are going to all media anyway, are they not? Why would they seek special permission?

Mr. Chairman: As you realize, I am relatively new. We have had media in, some TV footage and some coverage.

Mr. Eakins: I watched them at many different types of meetings. They come in and out whenever it is suitable to them and pick up what they want. I do not see why they would have to have special permission. If they want to come in, why do they not come?

Mr. Chairman: I presume they must need permission if they have asked to come in and set up on a permanent basis now; I am not sure. Claire is shaking his head, so maybe they do not.

Mr. R. F. Johnston: I don't understand the reluctance to have them in just because other groups were here in the spring. Their coming in has nothing to do with whether or not a group wishes to have some influence on this committee. The groups coming before us are not television performers who want to get their names spread across the province or something like that. They are here to give us information. If this is some way for us to spread that information farther, why not do it? I don't understand the reluctance to have them come in and have this open.

Mr. J. M. Johnson: Mr. Chairman, why do you not check with Rogers Cable TV and see what it is they do require. I think if they just wanted to come in and take 10 or 15-minute clips, they would be more than welcome to do so. If they want to set up for the whole day, then I think it could cause some problems.

Mr. R. F. Johnston: There was no problem in the constitution committee. They were in all day long; they had their little setup at the back and took their camera angles very unobtrusively. They were there the whole time and there was no problem.

We have been through this, and it was not just the constitution committee. One of the other committees was filmed last summer as well, and there was no problem. I thought it worked very well.

Mr. Eaton: Did they hook up on the microphones?

Mr. R. F. Johnston: Yes, they hooked into the mikes. It all worked very well. I saw a couple of the shows of it run, as you say, on the late show and at other times. I thought it was quite effective.

10:20 a.m.

There was just one head shot. Whoever was speaking was the person who was televised. There was no panning around to see what seats were vacant or who was asleep or who was yawning and that sort of thing. It was well controlled that way.

I thought it was an effective use. We got a fair number of phone calls from constituents about the whole constitution debate because it had been on, and I'm sure that we would not have had them if that had not been on.

Mr. Kennedy: That was the one in the House?

Mr. R. F. Johnston: No, this was right in the committee as it discussed the matter in detail through the summer.

Mr. Kennedy: I should check with the clerk to see. The committee is an extension of the House, and open TV isn't there. Then I would be more comfortable. I have no objection one way or the other.

Ms. Copps: I would like to make a motion that we have cable television because we are the elected members and what the clerk decides or does not decide should not be the key deciding factor.

Mr. Kennedy: It's the information; it's not the clerk.

Ms. Copps: I would like to make a motion that we allow Rogers Cable to televise the whole proceedings.

Mr. Chairman: The one difficulty I have, and I hope you will respect it, is that we did indicate that we would be on hearings. It wasn't on the agenda. I would like to introduce it to you and perhaps set a time when it can be dealt with in fairness. We did indicate that there would likely be no resolutions until such time as the hearings are over. I think it's maybe a little unfair to all the members of all parties for the chairman to introduce a new item on the agenda and then call for a motion right away. Maybe in fairness to everybody I can gather more information. Could we set a time, though, so that everybody realizes that? I suspected that there may be some differences of opinion, and it might require a motion.

Ten o'clock tomorrow morning then as the first item of business?

Mr. Kerr: I have something important on then.

Ms. Copps: Could we change that to Thursday morning?

Mr. Chairman: The chairman may not be here tomorrow morning either. I think it could be Thursday morning. Is that agreeable?

Interjection: Is that soon enough? How about tonight?

Mr. Chairman: At the end of the day? I don't know whether I can--

Mr. Kennedy: If you can get it tonight; if not, Thursday then.

Mr. Eaton: The only thing you would have to do is check with the Speaker's office and see what the rules on it are.

Mr. Chairman: Can we do that? Any objection to it as the last item then today? Is that soon enough for everybody?

Mr. R. F. Johnston: I would have to leave almost immediately then; but, sure, let's do it.

Mr. Chairman: Okay. The last item then this afternoon. That gives us time for it.

We do have one cancellation this morning. We have three groups that we are to hear. Is there anything else before we get into the hearings, any other direction, procedurally or otherwise, for the clerk or the chair?

Mr. Brandt is back with us as the parliamentary assistant to the minister, and the minister will be in, I guess.

Mr. Brandt: I expect, Mr. Chairman, his first appearance with the committee will be on Thursday, to the best of my knowledge. But he will be in from time to time. Failing his appearance, I will be here in his place.

Mr. Chairman: We had scheduled the hearings with approximately half an hour for each group or individual, and I believe everybody is aware of that. That is to include the presentation and any questions the committee members may have of the presenters, so we would like to try to stick to that time frame as best we can.

Mr. Kennedy: (inaudible).

Mr. Chairman: Yes. Does it have to go on Hansard, or does the clerk just need the--

Mr. Kennedy: I don't know.

Mr. Chairman: The clerk has the slips there and he'll note it.

The Riverdale Socio-Legal Services. John Argue is here to represent that group. Welcome this morning.

Mr. Argue: The clerk originally asked me to bring 30 copies of our brief. Shall I give that to the members?

Because of your timing and the length of our brief, I won't attempt to read the brief, but I would like to highlight the main points that we are making in it. My name is John Argue. I am a community legal worker at the Riverdale Socio-Legal Services, which is a community legal clinic in the Riverdale area.

We were interested in coming here this morning primarily because we represent an area where we think human rights is a very important concern to most people in the neighbourhood. It's a low-income area where a lot of people are on social assistance or on pensions. Therefore, when human rights concerns affect them, they seem to affect them more strongly because of their economic status.

Another reason is that it is an increasingly multicultural area. The Chinese population is growing significantly. There are a number of Vietnamese people moving into the area. An active Greek area has been there for a while. Therefore, in various groups within the community they are really quite concerned about human rights.

In recent months, actually, a particular incident has motivated us to come forward and prepare this brief because the Ku Klux Klan established itself in our community for a period of a few months, established its headquarters there. They were not invited in; they were not welcome. There was a rally organized by different groups, community centres. Our legal clinic took part.

There is a race relations group that is active in our community, and a number of churches all gathered together to have a rally in a park very near their headquarters, just to make the public point that the Ku Klux Klan is not welcome in our area. Whether that in itself convinced them to leave we don't know, but they moved to Parkdale. I don't think that solved the problem. The problem still exists in Toronto. Fortunately, it doesn't exist in Riverdale, but the effects of their activities do.

At the end of the brief--I trust you may have copies--we summarize our recommendations, and in the index we highlight the areas that I will deal with. So I will just try to summarize verbally the main points we are making in the brief.

I guess the underlying premise for why we are here is that we just don't think Bill 7 goes far enough. We are really pleased that a number of changes have been made in Bill 7. But essentially one of the things with which we are most concerned is the visibility and the public profile of the commission. It doesn't seem to reach the people with whom we are concerned and the people who certainly come to our clinic. They are not aware of their human rights. Often when people ask us how to achieve their human rights or how to stand up for a particular concern with a landlord or a welfare agency, they don't know that if they are facing an abuse of their human rights there is another option.

Our first point would be an international point, in fact. It's consistent with the preamble to Bill 7 and the existing Human Rights Code because it refers to the Universal Declaration of Human Rights which was passed by the United Nations in 1948. We have a very specific recommendation because, following the adoption of the Declaration of Human Rights at the UN in 1948--in fact, almost 20 years ago in 1966--two covenants were adopted at the UN: a covenant on civil and political rights and a covenant on ethnic, cultural and religious rights. We recommend that those covenants be recognized in the preamble. In fact, 10 years after the adoption of those covenants at the UN in 1966, in 1976 Canada acceded to those covenants.

The important implication of this is that there is an optional protocol that is annexed to the covenant on civil and political rights. That optional protocol allows an individual complainant, for those countries that accede to the covenant and the protocol, to bring a petition to the UN.

10:30 a.m.

We have seen a recent example of that in Canada. Sandra Lovelace is a native Indian woman who has been highlighted in the press in the last three or four weeks. The human rights committee of the UN just reported a few days ago that in their view, after viewing the Indian Act and her particular problem, Canada has abused her human rights. The situation is that as a native Indian woman she married a non-Indian and, therefore, under our Canada Indian Act she loses her status and rights as an Indian woman. After being married, she later wanted to return to the reservation and was barred because she no longer had the status and the rights of an Indian woman.

She appealed to the human rights bodies in New Brunswick where she resided, but she did not get satisfaction. However, the UN allows her or any resident of Ontario or elsewhere in Canada, if that person was not satisfied that he or she had their rights heard at the Ontario Human Rights Commission, to appeal to the UN, too.

We point that out. We have already agreed to it in its treaty form as a country. As a country, the provinces are included, and we would suggest that the covenant be recognized in the preamble. It would bring it up to date and just recognize the international situation.

The second major topic that we bring up would be regarding the independence of the Ontario Human Rights Commission, independence in the sense of taking place within the government structure. Many people come to our clinic. As we begin to advise them that there is an alternative of appealing to the human rights commission if they perceive a grievance, they hear that it is under the Ministry of Labour, or they have a perception, based on newspapers, that it is part of the government, and they are just very cynical about pursuing it.

Life Together dealt with that, the report which you have considered. We agree with Life Together on one point certainly. The placing of the human rights commission under the Ministry of Labour recognizes the fact that many of the complaints, particularly at the beginning but even now too, surround employment. The difference, I think, is that the grounds are much more varied now.

While dealing in large part with employment concerns, there are many other matters that affect people directly in terms of human rights and many government ministries and departments are involved. Hence Life Together thought it better to not have it in one ministry. They suggested having it appointed by the Premier's office and connected to the Premier. We hesitate at that. We disagree at identifying it with the Premier's office because we think it won't separate it from the government sufficiently for the people who might be concerned with asserting their human rights.

We would suggest instead using the example of the Ombudsman's office, that the human rights commission be appointed

by the Legislature and report to and be responsible to the Legislature, to give it an independent status from a particular government ministry, whether it be the Ministry of Labour or any other ministry. In varying it from the Ministry of Labour, I am sure consideration has been given to bringing it under the Attorney General or whatever other department, or the Premier's office, as the Life Together report recommends.

However, we would like a more fundamental and definite sign of independence of the commission. It is responsible ultimately to the Legislature in any case, and we think it appropriate that it be given that additional status of independence of autonomy so that people might have confidence in appearing before it and not be concerned that there might be a conflict between the people appointed by a different ministry and responsible to that ministry and a complaint against that same ministry.

The third point we make is in regard to extended coverage. The relevant clauses in Bill 7 would be in part I, sections 1 to 5. In each of those clauses we note that there is a restrictive wording. In other words, there are certain categories that are protected from discrimination and the wording is "without discrimination because of..." We suggest that is a limited wording in the sense that it does not leave the human rights commission the flexibility to go beyond the particular categories mentioned.

I would like to read the article in the covenant on civil and political rights that was passed by the UN. I think their inclusive wording, mentioning similar categories, the same and additional categories as in the Human Rights Code, but mentioning them in a broader sense, is a better way to go. In other words, it would allow the human rights commission to be more flexible in dealing not only with the categories mentioned, but with a related category or some aspect that is not specifically covered under the Human Rights Code. By mentioning an inclusive wording, it would allow the human rights commission the flexibility to pursue that area.

I read article two in the covenant: "Each state party to the present covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction, the rights recognized in the present covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

The key words we highlight here are, "without distinction of any kind, such as..." That is the crucial phrase, rather than the phrase, "because of," which has been used in various human rights legislation throughout the world; and it is emphasized in interpretation in the courts that it be restricted to those categories mentioned. The wording of the UN covenant states the categories listed as examples of things that should be definitely protected. However, it does allow the human rights commission flexibility to go beyond it if they think there is an area covered in terms of discrimination but which is not specifically mentioned.

As an example I suggest the issue of sexual harassment, even though sex is in the code. I would argue that it would not necessarily be interpreted this way in the courts, but it would allow the commission the flexibility of going ahead and pursuing sexual harassment. If this inclusive wording had been in the code, and sex has been in the code, the commission in the past few years before Bill 7 came out would have been able to pursue incidents of sexual harassment under the coverage of sex, and they would not necessarily have had to have the particular phrase, "sexual harassment".

Perhaps in the courts a judge would have considered that that specific category would have had to be there. The crucial fact we are pointing out is that with the inclusive wording of the clause the human rights commission, and the courts too for that matter, would have greater flexibility. What the end result would be is indeterminate, but what we would advocate is the flexibility of the commission, in particular, to go into other areas. We recognize, however, that particular categories must be mentioned because of discrimination, particularly in regard to those areas.

There is only one additional category we would like to mention today. It is one that has been talked about a great deal but has also been avoided. People seem to be afraid to talk about gay people. The phrase, "sexual orientation", has been advocated as an addition to the code by a number of groups and it is one of the glaring omissions from Bill 7. We, too, in our area, where there seems to be an increasing number of gay people, would recommend and hope that the committee would include sexual orientation.

The only additional point I would make in the brief time I have is that because this has been such a controversial item, discussed in the papers so widely, it seems a really glaring omission when the legislation comes before the Legislature and it is not in. Various people have urged the Legislature to put it in, and yet the government has not seen fit to include it in the code. There is obviously discrimination taking place in Toronto certainly, but also elsewhere in the country. It occurs in all sorts of insidious, quiet and subtle ways within families from Kenora to Cornwall. We would hope the committee would give protection to gay people too.

The next area would be that of the right to be heard. We point out that the right to be heard by a complainant, a person who is making a complaint before the human rights commission, is only recognized at the level of the board of inquiry. We would submit that is a problem in terms of the credibility of the commission. In other words, people wonder how the investigation is done. A person would go to the human rights commission, speak to an intake officer and itemize all the facts or concerns that he or she might have, but until the commissioners make the decision whether or not to recommend that a board of inquiry be held, that complainant has no formal right to participate or to be recognized.

In other words, after the information is first given to the intake officer, an investigative officer might call that complainant, or might not, according to her or his discussion. In terms of the report of the investigating staff of the commission to the commissioners, when those commissioners decide whether or not to recommend a board of inquiry, that complainant is not guaranteed, even at that point, a right to be before the commissioners.

We submit the right to be heard in a court case or before a decision of any political, judicial or administrative body is such an elementary right that surely it should be recognized. We hope the committee will add "the right to be heard" for the complainant so that at the stage that the investigative report is made to the commissioners, that person be given a copy of the investigative report before the commissioners discuss and decide it, but also that the complainant be able to come to that session and present her or his views. Surely it seems reasonable for the person being affected by the complaint to present those views before the commissioners rather than relying on the advice of the commissioners.

10:40 a.m.

We note that in the published numbers of board inquiries that have been held since 1962 the number only amounts to 102, as far as we know. I am sure there may be more since that listing came out. It was about a year ago, and I am sure there have been other boards in the last year. However, 115 or even 120 boards of inquiry, whatever the final figure is to this date, surely does not reflect even 10 per cent of the number of complaints that have been held. Whatever the number is, there is a vast number of people who have come before that commission who don't know of the process that has gone on in dealing with her or his complaint until she or he finds out from the commissioners whether or not a board of inquiry is held.

There is an appeal that is able to be held before the commissioners, but in our experience certainly with the tribunals and administrative bodies that we deal with in our work--the Social Assistance Review Board is the most frequent, but the Immigration Board would be another--when the commissioners themselves decide on whether to validate or change a ruling that they have previously made, we find they usually agree with what has been done before. We submit that that produces some cynicism and some scepticism in the people who are coming before the commission, and we would hope that the complainants would have the right to have some part in the process in order to be sure and just know how their complaints are being dealt with.

The last point would be a general point, and it is implied by some of the earlier points we have made. We suggest that the human rights commission take a more active role. We are concerned that the commission sits back and waits for complaints to come to it. In a society where there is human rights abuse, where the Ku Klux Klan can come into a Toronto neighbourhood and in 1981 establish itself in a multicultural neighbourhood, we suggest that is incredibly shocking evidence of potential human rights abuse.

We would argue a few things in this regard. We would argue that the human rights commission should surely take a greater role, that people should be educated in terms of their rights in human rights so that they will know where to go, how to proceed, if they have a complaint but, broader than that, if education takes place, to be aware of their human rights so that people will be less likely to abuse them.

I had an interesting experience myself a few years ago. I was teaching swimming in northern Ontario--excuse me--north Toronto. North of Bloor I get confused. That is a Toronto joke. Some of the areas in north Toronto are pretty well-off areas where kids go to good schools. They come from homes in areas where education is at a higher level. They just have so many more resources and are able to learn so much more at an earlier age than in an area like ours, which is a low-income area where kids don't go to school as long. You know all the differences. It was interesting when I was teaching that there was hardly any evidence of discrimination to a black or a Chinese kid at school. It just didn't go.

Interestingly, there were fag jokes because sexual orientation is not covered by the code. That is one area which is still a legitimate area, where kids feel they can make fag jokes or rebuke queers. But in those schools it is really interesting that they don't make "nigger" jokes or they don't abuse the rights of Chinese people. I really think that human rights has been discussed so much in the last 30 years that there are certain barriers those kids have learned in the neighbourhoods they have grown up in, and there are ways they just don't go beyond.

I remember when I was going to public school in the 1950s--I grew up in Ottawa and there is a fairly multicultural population in Ottawa--and there were some black kids and Chinese kids in school, and there would be jokes and butts against them. That didn't take place in a similar neighbourhood where I was teaching just a couple of years ago.

However, where I am working there is a store just up the street, a place where I get coffee every day. There was a Chinese boy, about a 16-year-old guy, working there in the evenings for about two weeks. The kids in that neighbourhood, not familiar enough with the Human Rights Code and the concept that everybody has human rights, not just a few of us in this society, but everybody, called him Toyota and whatever other Japanese or Chinese or oriental name they could think of. They alienated him so much that he had to quit his job in a couple of weeks. He just couldn't take the emotional strain. That is only one minor illustration. I am sure you have heard of so many and that you yourselves in your constituency are aware of countless other examples.

What we suggest is that it is so important for the human rights commission to have a high profile public role so that everybody in the society, in a neighbourhood like ours as well as the other areas where they are aware of human rights, will become aware that everybody in this society does have human rights and they won't take advantage of people.

The final point I would make is that because in the multicultural district in which we live we have a very active race relations centre, Riverdale Race Relations Centre, comprising representatives from all sorts of different groups of people living in the area, we would hope that kind of group would be the kind of group with which the human rights commission might work directly in order to exercise a higher role. We would suggest that funding be given to such community groups to recognize the contribution they can make to the work of the human rights commission. Perhaps race relation centres might be funded as well in that same kind of context so that, as we have storefront clinics in terms of legal clinics or in terms of bringing health to people as community health centres are beginning to broaden around the province, in the human rights area this would be an excellent way to bring the concept of human rights to the doorstep of people who really need to learn about it, who have questions and perhaps complaints.

I have spoken too long, so I will stop there and try to answer questions.

Mr. J. M. Johnson: Mr. Argue, on page three of your brief you make a statement that the outlook is ominous when the most massive individual police raid in this country's history does not convince the government to protect the rights of the group that was attacked. I assume you are referring to the bath house raids?

Mr. Argue: That is correct, on February 3rd.

Mr. J. M. Johnson: You feel that that group of homosexuals' rights have been abused?

Mr. Argue: We do, sir. We would suggest that the gay group in Toronto was selected deliberately, and on February (inaudible) highlighted--

Mr. J. M. Johnson: If the police, in their wisdom, thought there were young children--in fact, it is my understanding, whether it is correct or not, that there were young boys under 14 involved--if the police suspected this, would that not be reasonable grounds for their actions?

Mr. Argue: I suspect that would be reasonable grounds in most circumstances.

Mr. J. M. Johnson: Maybe we have to wait until the case is resolved, but why do you--.

Mr. Argue: Mr. Johnson, the point we are making is that approximately 250 officers were involved in arresting approximately 300 people. That is just an incredible incident, I would suggest, of highlighting discrimination, of selecting a particular group to attack. There has been no other incident like it in our entire history. The police suspected there were illegal things going on. You suggest there were people perhaps under 14. To our knowledge, that doesn't exist. Our legal clinic is only one clinic in Toronto--

Mr. J. M. Johnson: Would it make any difference to you if it did?

Mr. Argue: I would suggest that the police certainly should go after an abuse of the Criminal Code in that instance. To our knowledge and in the publicity that has been circulated to this point, there is no indication at all that anybody under 14 was in any of those baths that night.

Mr. J. M. Johnson: I am concerned that you are zeroing in on this case. You say that it is because of the gay group, the homosexuals. I am not sure I am correct in this, but it is my understanding that in the region of Halton there was a police raid on Tent City or something and that was not homosexual. That was male-female.

Mr. Argue: I realize that but I think there was a difference in the raids.

Mr. J. M. Johnson: Just a minute, please. You say that in the one instance it is abuse of civil rights and in the other there is no hue and cry raised because people expect, when the law is broken, it should be enforced. I fail to understand why homosexuals should be treated any differently than any other group who are suspected of breaking the law.

Mr. Argue: Mr. Johnson, our concern is that they are being treated differently by the police. They are being selected especially for discrimination. That is our major concern. In terms of this one sentence, it is a rather brief and general sentence as you would assume. We just use it as an example of a dramatic case where the gay population is being selected for discrimination.

10:50 a.m.

There are differences between the two cases that you mention. The raid in Halton took 50 officers to arrest 96 people, I believe. I'm not sure of all the incidents that took place during that time. I don't know enough about it to really comment on it--certainly about that particular raid.

I do know, though, from the perspective of our legal clinic that, from what we have read in the press in Toronto and what we have heard in Toronto, the kind of behaviour that was exhibited by the police in the raids here in Toronto indicated an abuse of human rights much more dramatic than in any other raid, to our knowledge, in the country's history.

Mr. J. M. Johnson: I won't belabour the point. I have two points to raise. One is, if instead of using 300 police they had used 30, would it have been okay?

Mr. Argue: It implies that the police would have treated the people with more consideration. What I was suggesting was that when there is almost one police officer for every person, most of whom are nude at the time and who are therefore threatened by police officers coming in in full dress, being brought before the courts is just an incredibly intimidating experience.

Interjection: Wouldn't it take longer with 30 police officers?

Mr. J. M. Johnson: My last point, Mr. Chairman, is that some of the articles I have reading in the press the last few weeks disturb me. We are talking about human rights, and human rights for all types of people. Now the latest trend is human rights for children and, with this, sexual exploitation. It has been in Time and it has been in several other publications. Is this the next step?

Mr. Argue: Certainly not.

Mr. J. M. Johnson: I hope not. Thank you.

Mr. Eakins: Is it your feeling that the Ontario Human Rights Commission does not have a high enough profile? I think you made some reference to that.

Mr. Argue: Yes, we did. That is one of our premises.

Mr. Eakins: What would be your suggestion for improving that?

Mr. Argue: One suggestion, for example, is in regard to the incident that took place involving the Ku Klux Klan. I noted that the Ku Klux Klan established its headquarters in our area for a period of months. We would assume that the human rights commission would be interested in learning what was going on in Riverdale that brought the Klan there, that they would be asking all sorts of community groups, including our clinic, for that matter, what was going on once the Klan was there. We would hope that the human rights commission would be seriously concerned with the potential abuse, from what we all know of American history primarily, but also of Canadian history going back to the thirties, when the Klan has been present in our neighbourhoods so that they would be able to respond if human rights abuses occurred.

Our criticism is that the human rights commission didn't even take any preventative action at all to inquire into what was going on. The broader thing is that we are concerned that, particularly in neighbourhoods like ours where the illiteracy rate is much higher and where education is lower, people are not as aware of their human rights as are people in some other areas of the province. So, again, we would urge the commission to play a higher-profile role to get the coverage that even exists right now known to the people who might be involved.

Mr. Eakins: I would disagree on one point. I don't think it should be the responsibility of the human rights commission to go out and drum up business, so to speak. I think that their office should be well known, as is the Ombudsman's office, but I don't think it is the job of the Ombudsman to go out and say, "Hey, you should be aware of this." I think the Ombudsman's office has improved its office very much in the last year or two by making it known to everyone in Ontario. In fact, I think that, with all the complaints that office received in the early days, it

probably has a higher profile and is better known than any jurisdiction in the world. Perhaps the human rights commission should be making the average person in the province aware of what their services are, but I must say that I disagree that they should be going out and initiating the process themselves.

Mr. Argue: I would just like to qualify that, though. I agree with your example of the Ombudsman's office. In our area the Ombudsman's office, in fact, is widely known. The human rights commission is viewed rather cynically because it is part of the government, I think, and for other reasons. They see no difference between welfare officers and other people with whom they deal. So that's their problem, they don't see an independent role for the human rights commission. Here's the Ombudsman. They see an independent office in which they might get a hearing. That's the difference.

I didn't intend, though, that they should drum up business. Our concern was that the human rights commission should be aware of what's going on in the community so that when a Ku Klux Klan or some other group that will very likely cause disturbances and difficulties in a given area comes into an area they should at least be aware of what is happening so that they will know of and be ready to deal with problems effectively if and when they arise.

Mr. Eakins: I see many concerns resolved without having to go to legislation. I must say that it personally bothers me that every time we think there has been some wrong we have to turn to legislation in order to rectify it. Can you make some suggestions perhaps of how we might improve human rights without always having to turn to legislation?

Mr. Argue: Our firmest point there would be our point about the inclusive wording of sections 1 to 5. We pointed out that that is restrictive wording limiting the coverage and the activities of the commission to the categories that are thus listed, so they have to deal just with those categories.

An inclusive listing, using as an example the article I read from the UN covenant, allows the commission and the courts to be more flexible in dealing with categories so that they could go beyond the categories just listed, when human rights abuses become evident, after the act has been passed.

That's the trouble with legislation. As you know more than I, it is so difficult to get the legislation right up to date so that you will not have to deal with it a year or a few years down the road. We would suggest that this might be one way to make it easier. The inclusive listing would allow the human rights commission and the courts more flexibility over a longer period of time to deal with items of which we do not know yet. There may be something of which none of us would be aware that in a couple of years' time might become a serious human rights abuse or be considered a human rights abuse and, therefore, people might want to appeal to the commission. I think that an inclusive wording of the code would be the best way to allow the commission and the courts the flexibility to go beyond a specific way.

Mr. R. F. Johnston: I was coming at it from two angles, one of which I should probably drop because it would just unnecessarily aggravate my namesake over there without the "t" on the other side. I don't know if you're looking for a column in the Toronto Sun or something, John, but I don't think that was a necessary approach, when you take the full scope of the recommendations that have been brought before us, to focus in as you did. But I won't pursue that. I have calmed down a bit.

I like all of the recommendations in your report, John. The one thing I hadn't thought about prior to this was the notion of giving the complainant the right to be heard before you get to the state of the appeal. I presume one of the problems that might be raised by the human rights commission on that would be the amount of their time that would be taken, that if it is just an officer reporting to a superior and saying, "Look, there is no need to go on with this; this is cut and dried," that's something that we can handle in a five or 10-minute meeting, and you can run through a whole session of those.

However, if you have somebody who is going to have the right to be heard, if he wishes to be represented in that right to be heard and it will involve lawyers, et cetera, you are going to extend that whole process unnecessarily so that the kind of complaint which does not require action, is maybe either mischievous or just badly directed, is the kind that could cause us to get back to the kind of backlogs that we have had in the human rights commission over the last number of years. How do you respond to that? I think that would be the complaint that would be raised with that.

Mr. Argue: In terms of timing, it's hard to answer that exactly with respect to the specific problem you raise that the commission might have. I note that more staff have been hired for the human rights commission recently and, therefore, the backlog has been reduced. I would hope that they might be able to deal with such a thing. But the important point that we would emphasize is that the right of any complainant is so fundamental that surely it is too important to be neglected even if it does delay the results of a particular investigation by however long. I'm not sure how long it might delay it. I think that's the major point that we would make.

I feel that it wouldn't delay it too much either. I'm not sure. Here you would have to rely on the experience of the human rights commission. I would hope that they might give it a try if the committee and the Legislature have decided to recognize this right. We think it's a really important, crucial, fundamental right that is recognized, of course, in the other tribunals or legal proceedings in the province, and so it should be recognized with this process as well. We think it's so important that even if it did take more time then it should be recognized.

Mr. R. F. Johnston: You are arguing that since the Social Assistance Review Board, et cetera, has this kind of process that--

11 a.m.

Mr. Argue: Yes, in every other tribunal--excuse me, I am not sure of every other tribunal, but all the other tribunals with which we deal--certainly one of the fundamental bases of having a hearing in court is that the person should have his or her day in court. Similarly, we suggest that before just getting a letter or decision of the commissioners that an inquiry will or will not go forward, surely that person should be given the right to know about the report that has been done, particularly when the person has not necessarily been involved in the investigation.

It is up to the discretion of the investigating staff and the commissioner, depending on the process, to involve the person at those stages. From the point that a person might lodge a complaint to the time the decision might come down, it is quite conceivable that during the entire process the man would not hear a thing about what is going on. We suggest that is an obvious problem affecting the credibility of the commission and raising all sorts of questions about how they are going about it and on what factors they decide on finally recommending an inquiry.

In our experience, we have encountered a number of people who have applied and who feel they should have a board of inquiry. They feel they have not been fairly dealt with, and yet they do not know the process. That is an aspect of it. If they have the right to be heard, they might recognize the process is fair. If they are able to see the investigative report and appear before the commissioners arguing their case, then they might have more confidence in what has been done and on the objectivity and the fairness of the commissioners. From that perspective too, we think it would raise the credibility of the human rights commission.

Mr. Eaton: You started out with some comments about the Ku Klux Klan and said you were disappointed because the human rights commission did not, more or less, investigate them and find out what their activities were and so on and be prepared to act on it.

Mr. Argue: Not necessarily that it did not investigate the Klan as such. That would be going before any complaint. What we were suggesting was that because many of us suspect the Klan is going to be discriminating and abusing human rights in the area where they have activities, we would hope the commission might learn from the surrounding community how they perceive the Klan to be in the area.

Mr. Eaton: What other groups do you have to investigate besides the Klan and what kind of information should they be going out asking for in a community? We have established some sort of a club in Dorchester. Do you have them go out and find out all the information about that club now? Where do you draw the line?

Mr. Argue: I recognize it is a fine line. That is why I qualify by saying not to investigate the Klan. What I would suggest would be appropriate would be for the commission to contact our legal clinic in the area dealing with complaints, whether it be landlord or tenant or whether it be human rights abuses, to see if we have heard of any problem.

Mr. Eaton: How do you decide? We know the name of the Ku Klux Klan and nobody likes what they stand for. But how do you decide who else they come and check on? Do they come and ask your clinic about the FYI club or something? How do you decide?

Mr. Argue: The line there is drawn by the fact that such an inflammatory organization being involved in--I mean we have learned from what age in school that the Ku Klux Klan is representative of--

Mr. Eaton: You are singling out one group in saying that. How do you decide what other groups they might also do that same kind of checking on?

Mr. Argue: It is a fine line. As I mentioned earlier, what we are saying is that we would hope the human rights commission would be active in the area of knowing what is going on. It is the information gathering; it is being aware of what is going on in the community so they would be ready to deal with problems.

Mr. Eaton: In every organization that starts up, would they somehow find out what is going on in that organization, whether they are a secretive, discriminatory group of some kind or not?

Mr. Argue: We would need a human rights commission office on every block. That is obviously impossible. We could not afford that.

Mr. Eaton: You talk about their getting out and investigating a little more and digging into information. You are almost setting up a human rights police force or investigative group of some kind to be able to do that.

Mr. Argue: No, we would not want that. We are arguing, on one hand, for a higher profile so that people, particularly in areas like ours, are aware of their human rights and are aware of the human rights of other people on their block and in their neighbourhood so that they will pay attention to them, so that they will not make jokes--

Mr. Eaton: What would happen in the situation about the Toyota joke? You almost inferred on that one that somebody should have known about that and had something to say about it.

Mr. Argue: No. I used that as an example of the lack of education in an area like ours. In other words, where there is--

Mr. Eaton: You mentioned the human rights people having some sort of presence in the situation.

Mr. Argue: I was hoping and we would urge that the human rights commission would make the discriminative clauses, the protection of the categories in the Human Rights Code, widely known to as many areas, if not every area, in the province as possible.

Mr. Eaton: I think that kind of publicity, making what is in the code known, is good.

Mr. Argue: That was my major point.

Mr. Eaton: Would you, for instance, ban the Ku Klux Klan in Ontario, in Canada?

Mr. Argue: I would not go to the point of banning them, but I would use every public institutional way of discouraging their activity as possible.

Mr. Eaton: I think this is a point that we have to be very careful of. It is the Ku Klux Klan today. Who is it tomorrow?

Mr. Argue: Yes.

Mr. Eaton: How do you make that decision on which group is being that way? I think we have to be very careful with that.

Mr. Argue: It is a delicate issue because the rights of a given individual or innocent group might be involved if we are saying every group has to be investigated. We use the extreme example of the Ku Klux Klan because it has invaded our neighbourhood in Parkdale.

Mr. Eaton: I hate to see you use any example of any group that you say has to be investigated because somebody has to make that decision and somebody gets hurt by it. Just the example of the Ku Klux Klan, somebody in my riding was named by one of the members of the NDP--no connection whatsoever--and it certainly hurt him in his community. This sort of tie-in is something that we have to be very, very careful about.

Mr. Argue: I may have misled you and the brief may have. I did not mean that every group should be investigated in terms of the human rights commission seeking a higher profile. I was emphasizing particularly education, getting the code known more. I mean that I think we all agree on that, I am sure.

But, more than that, I am arguing that the human rights commission should be active in a given area so that people will know that they can go to them to appeal to the human rights commission because people don't know. The example of the Ombudsman is a really effective one. Many average people on the street have heard about the Ombudsman and feel confident about appealing to the Ombudsman.

Mr. Eaton: They should. The program is put out to publicize that.

Mr. Argue: I am not sure that the human rights commission would get the same reputation, but we are just arguing that they should try to do that, as an example.

Mr. Eaton: There is just one other point that I want to make. You mention not going beyond Bloor Street or something in terms of what is going on out there. You could not understand why

the government, when a few people had urged them to put sexual orientation in the bill, weren't doing it. There is a hell of a lot of people out there saying, "Don't do it" because they feel that their rights are being abused when they are going to be told --for instance, in the farming community particularly--that they have to hire somebody and have them living in their house, around their children and so on. They feel they have some rights to make those choices themselves.

Miss Copps: On a point of clarification, that is not what the legislation says. You do not have to live with anyone. There is a restrictive clause for units of four or less.

Mr. Eaton: If you are hiring someone and you are supplying them with a place to stay on your property--

Miss Copps: The legislation states that you do not have to share an accommodation.

Mr. Eaton: --and you were to fire them under what you are proposing--

Mr. Chairman: I do not think we want to debate that at this stage. We will have lots of time to do that when we get into that bill.

Mr. Argue: If I can just make one point, we outline in our brief that we believe certainly that support for including the sexual orientation is much wider than people perceive.

Mr. Eaton: You want to get out there and see.

Mr. Argue: I would suggest as an elected representative you are just nervous about the backlash that might occur if you were to take a positive stand on it.

Mr. Eaton: Not at all. I do not mind taking a stand on--

Mr. Chairman: I think that point has been covered and no doubt there will be lots of debate on that when we do get into the bill. Mr. Brandt, you had a comment?

Mr. Brandt: Just on the first point that was raised by Mr. Argue and then followed up by Mr. Eaton. Under part IV of the proposed bill, page 11, you will note that the commission may initiate a complaint by itself or at the request of any person.

In fact, the powers that you are suggesting with respect to the commission taking action on its own part or after having received a complaint, as an example, from your neighbourhood group to the commission specifically with respect to the Ku Klux Klan could have been followed in that kind of fashion. The powers are within the proposed bill to do exactly what you are suggesting.

You could argue that perhaps the resources are not there. You did make an admission earlier that the resources are being expanded. I can assure you the minister has every intention of

providing at least reasonably adequate resources to the commission in the future to stop the backlog of cases which has occurred in the past. But the proposed bill does cover the point that you raised, so the commission can, in fact, initiate action if it feels it is necessary.

11:10 a.m.

Mr. Argue: We are pleased about that, but we just point out that in our experience, and certainly in the views of the people who come to our clinic and from the way they express their views, they are not convinced that the commission is taking those initiatives. Their perception of the human rights commission is sitting back and waiting for people to bring complaints to them. They would hope that the commission would have a higher profile, as I was saying, not through education but at least having the presence, not investigating every group but having a presence so that people would feel they could come to a human rights officer or to the commission with a complaint and have it followed through.

Mr. Brandt: I just wanted to make the point that the flexibility is in the proposed bill to undertake the kind of thing that you are talking about so that an amendment will not be required. A process of education may be required to bring the bill to the attention of more people so that they understand the mechanics of it, but it is in the bill now.

Mr. Argue: I should distinguish it more concretely. We are pleased that it is in the bill. I suppose the whole point of our recommendation in outlining it was going beyond Bill 7 and hoping that the Legislature might encourage the human rights commission to take a more active role with a higher profile; that's all. The basis is there; I recognize that and applaud it. But we hope the commission will get more active.

Ms. Copps: I have a couple of quick questions. I have some concerns also about delivery time if you allowed an appeal procedure similar to that at present held by SARB, or delivery time if you used the Legislature as your bottom line, because in the Ombudsman at present I know from personal experience that a number of constituents have been waiting anywhere up to one, two and three (inaudible). That could create a problem because one of the problems that has been outlined by previous speakers has been that question of delivery time. They thought the time lag between the beginning of the complaint and its resolution was too long.

Can we get a copy of the inclusive wording in the UN covenant?

Mr. Argue: Certainly. I read it out when I made my initial remarks.

Ms. Copps: Yes. I just wanted to get a copy of it.

Mr. Argue: Certainly.

Ms. Copps: I have some other questions also. I do not know whether you are aware of this. I believe that in British Columbia they do use an inclusive wording and have run into some legal problems with it because it has not covered as many bases as they thought.

Mr. Argue: They do not use inclusive wording, but they use a phrase "with reasonable cause", or something like that.

Mr. R. F. Johnston: For reasonable something or other.

Mr. Argue: I forget the exact phrase. That, I admit, has not been used well in the courts.

The inclusive wording that we recommend is in the UN covenant, which we would hope would get beyond it. We are not certain because this is a grey area obviously. It is used in the UN covenant, but we are not familiar with its being used in a specific jurisdiction and therefore brought up before the courts. We are not sure how the courts would deal with it. We just mentioned it as possibility both for allowing flexibility and a greater role and perhaps getting into other areas without having to necessitate coming back and making a major legislative review.

Ms. Copps: You were talking about the experience of the kids in the Riverdale area as opposed to that of some of the kids in north Toronto. Unfortunately, not all the members had a chance to see it because I do not think that many showed up, but the chair brought a film which did give some sort of educative, positive human rights interpretation for kids in the schools. Apparently, it has worked very well. There was an earlier speaker who talked about the experience in his school and, I believe, referred it to the Ministry of Education to see if they could maybe do something like that on an ongoing basis.

I just wanted to make a couple of other points with respect to some of the things that were previously said. First, I believe the Attorney General has already stated in the House that he is keeping a close look on the Ku Klux Klan. It is certainly a responsibility that he has seen and has pursued to this present time despite some members' contention that no group should be looked at more closely than others.

Secondly, with respect to the issue of the bathhouse raids, I think that same minister also answered in the House that the reason the numbers of police were so great was for something along the lines of the convenience of the found-ins because they did not want to have to take them down to the police station and book them. I think if you go back and see that it will be on the record as an answer during question period.

Mr. Chairman: Thank you very much, Mr. Argue, for your presentation to us today and for taking the time to answer our questions.

The Confederation of Canadian Unions is represented by Peter Dorfman. Perhaps you could introduce the other members for Hansard.

Mr. Dorfman: Certainly. On my right is John Meiorin, president of the Confederation of Canadian Unions. My name is Peter Dorfman from the Canadian Union of Industrial Employees. Laurell Ritchie is an organizer with the Canadian Textile and Chemical Union. Maria Iori is from the Canadian Textile and Chemical Union. In addition, we have a delegation of another six people in the audience.

The Confederation of Canadian Unions is pleased to have this opportunity to present its views on the amendments to the Human Rights Code contained in Bill 7. The CCU has within its Ontario council eight unions representing some 6,000 workers in the province who will be directly affected by this legislation. As trade unionists, we attach particular importance to the provisions contained in the Human Rights Code.

The most fundamental purpose of a trade union is to protect and expand the rights of its members on the job and in society at large. This is accomplished primarily through collective agreements, but there are many rights and prerogatives which in the current collective bargaining framework refer exclusively to management. In these instances, trade unions must rely on legislation to protect the basic human rights of its members.

The majority of Ontario's workers are not represented by trade unions and are solely dependent on the human rights commission to remedy injustice at the work place. I would add that we are not belittling the Employment Standards Act; that should be mentioned there. It is from this perspective that we are seeking legislation that broadly defines one's human rights and a commission that aggressively enforces the law throughout the province.

Freedom from discrimination: We note that the preamble to Bill 7 contains an expanded statement about the "inherent dignity and the equal and inalienable rights of all members of the human family." We are concerned that this statement will be nothing but window dressing if its intent is not reflected in the law itself. We believe that human rights legislation must move beyond a narrow antidiscrimination theme and make a positive statement about human rights. Thus we feel, for example, that section 4 must be revised to include the right to humane, as well as equal, treatment in employment.

The necessity for such expanded terms of reference was demonstrated in the Canadian Textile and Chemical Union's complaint against Puretex Knitting Company where electronic surveillance was installed to harass and intimidate immigrant women working in the plant. Our complaint was dismissed because the commission found that the cameras were beamed at all workers in the factory. Therefore, no worker could claim discriminatory treatment. Finding no justice from the commission, it took a three-month strike to rid the plant of the offensive cameras.

The existing code is actually clearer in setting out accepted standards of conduct in Ontario's work places. We recommend that section 4 of the new code be further strengthened by incorporating sections 4(i)(e), (f) and (g) in section 4 of the new code.

Equal pay for work of equal value: We support the government's Advisory Council on the Status of Women in its urgings to the committee to use this opportunity to introduce equal pay for work of equal value to Ontario legislation. This would follow the example of the Quebec and federal governments which have introduced the concept through their human rights legislation. Although Ontario gave an undertaking to introduce such legislation over a decade ago when Canada ratified the United Nations International Labour Organization convention dealing with equal value, it has failed to meet that commitment. It is time to respond to the vast public support shown for this legislation at the 1980 Bill 3 hearings on equal pay for work

11:20 a.m.

Section 9, discrimination based on pregnancy or childbirth: A definition of discrimination "because of sex" should be added to section 9, specifying that discriminatory practises based on pregnancy or childbirth are included in the prohibition of discriminatory practices based on sex. A 1978 Supreme Court judgement--Stella Bliss versus the Attorney General of Canada--has hampered commissions everywhere in their efforts to include pregnancy in the definition of discrimination "based on sex." In the Bliss case, the court ruled that such discrimination is not against women, but against pregnant persons. Therefore, the specific reference to pregnancy and childbirth that we propose is necessary to overcome this Supreme Court decision. We note that the Canadian Human Rights Commission has seen fit to recommend the same change in the federal legislation.

Section 10, constructive discrimination: We fear that the present wording of section 10 of the new code will not prevent constructive discrimination. The new code should be amended to read, "A right under part 1 is infringed where a requirement, a qualification or consideration is imposed that is not a prohibited ground of discrimination but that would likely result in discrimination against a group of persons."

With the addition of the word "likely," a complainant would not face such an onerous test in order to prove discrimination. The present wording would fail to protect a group of persons unless they were totally disqualified by a given requirement. For example, many of our members face the slogan "Canadian experience required" when applying for a job. If this requirement was to be stated as a preference but not as an absolute requirement, the code as presently worded would be ineffective. Requirements disguised as preferences are none the less discriminatory.

Hate literature: The recent failure of the crown to achieve prosecution in Regina versus Siskna and McQuirter has convinced the Confederation of Canadian Unions that there is little effective curb on hate literature in the federal or provincial jurisdictions. I might add that McQuirter is the leader of the Ku Klux Klan in Ontario and the would-be ruler in Dominica. Yet we also fear an improper interpretation of any strengthened hate literature provisions. For instance, a British Columbia judge recently ruled that calling a strikebreaker a scab was unlawful.

We, therefore, suggest that both these concerns can be met by strengthening section 12 so that the expression of criticism and political beliefs is permitted as long as it does not tend to expose a group of persons to contempt, ridicule or hatred because of a prohibited ground of discrimination.

My own union, the Canadian Union of Industrial Employees, recently encountered the Ku Klux Klan while attempting to organize the mostly nonwhite employees of a small factory in North York. An unknown person had posted a Klan bulletin on the company bulletin board. When asked by the press why the company allowed the notice to remain posted for over six weeks, the company president was quoted as having "better things to do with my time" and that he "did not feel that strongly about it".

The commission would not pursue the complaint against the company because it had no proof who put the notice up on the bulletin board. This attitude alarms the Confederation of Canadian Unions since we expected the commission to adopt the view that an employer has an affirmative responsibility to maintain a discrimination-free work place. This view was recently expressed in a decision of the public service staff relations board where there was found to be an "affirmative duty on an employer to create and maintain a working environment free of racial discrimination".

Faster processing of complaints: It is commonly known that the Ontario Human Rights Commission is one of the most underfunded branches of the government. Consequently, the investigation of complaints is notoriously slow. Complainants often wait over one year for their cases to receive attention. Finding a remedy to injustice which has been so delayed is very difficult. We have little hope that the commission's funding will be increased sufficiently to meet this slow investigation problem. Therefore, we propose the automatic appointment of a board of inquiry if a complaint is not settled 45 days after it is laid. This step, together with the new provisions expediting the process of a board of inquiry, would help relieve the long waits for case investigation.

Independence of the commission: The Ontario Human Rights Commission should be removed from the jurisdiction of the Ministry of Labour and made directly responsible to the Legislature along the same lines as the Ombudsman. This step would remove the commission from the political considerations of a particular ministry.

Remedies and penalties: We commend the recent steps to broaden the remedies available to complainants, but we suggest these further changes:

1. That a complainant be permitted to use the courts as a means of redress for a violation of their human rights. The present legislation hinges access to the courts on permission from the Minister of Labour and in the new code on the Attorney General. We can find no record of this permission ever being granted and we feel that the commission should not have a monopoly on the redress of human rights violations.

2. The commission's approach to settlement lacks teeth because it is too reliant on conciliation. The commission backs away from many complaints on the basis of an apology and a promise from the respondent of no further breach. A penalty system would give the code more teeth. The enforcement of every other type of legislation is based on the imposition of jail or financial penalties, and this option should be available in the enforcement of human rights. In Saskatchewan, respondents in human rights cases are liable to penalties up to \$200 upon summary conviction, as well as being liable to the orders of a board of inquiry.

3. A complainant should be able to lay complaints on behalf of a group of persons who are united by a prohibited ground of discrimination. In many cases, combatting institutional discrimination depends upon identifying unknown victims of a given practice. An individual may not be able to prove discrimination in his own case without reference to the broader evidence of discrimination.

4. Although the present section 38 allows boards of inquiry broad powers of remedy, we suggest that this section should explicitly state that the board has the power to order special programs such as affirmative action or educational as a remedy.

Public profile: The new code generally increases the mandate of the commission to pursue its activities outside the sphere of simple processing of complaints. This work is very important. However, it would be better facilitated by a new division of the commission. We suggest that a human rights advocacy division be set up along the lines of the race relations division and that its mandate include: (a) setting up branch offices of the commission in various communities; (b) to conduct educational programs for employers to promote their responsibility to maintain a work place free of discrimination; (c) to intervene in problem situations in the community; (d) to take initiatives in spot-checking recognized problem areas, for example, employment agencies and certain landlords; (e) to publish and publicize the decisions of boards of inquiry, especially those related to employment, so that the general public is informed of the emerging interpretations of the code.

The officers and members of the Confederation of Canadian Unions want to thank you for this opportunity, and we trust that you will give our submission your careful consideration. Thank you.

Mr. Chairman: Thank you very much, Mr. Dorfman.

Mr. J. M. Johnson: Just one question pertaining to penalties. It is my understanding of reading the brief that you don't feel the bill is strong enough pertaining to the penalty section.

Mr. Dorfman: The kind of penalties we are proposing are an option that is not available. Right now penalties are imposed, or upon summary conviction the Minister of Labour will give you permission to prosecute in the courts, which only comes after repeated violations. As I say, we are not aware of it ever coming.

The only other way there is any kind of financial implication is in a remedy whereby you have to take somebody back or in payment of anguish. We are talking about penalties in that you did this wrong; therefore, you face a penalty, aside from anguish, summary conviction after permission from the minister, et cetera.

Mr. J. M. Johnson: One of the concerns I have, and I hope it is not misconstrued by some of the people here, is the fact that we do have a lot of small employers. We have a lot of people, especially in my type of riding, which is basically rural and small town, where we are not talking about large companies. It happen to think there could be a difference.

I am concerned that we are drafting a piece of legislation that is fair to both sides, and I think we share this concern. I am concerned that we might run into someone who lays complaints, not frivolous, but maybe even false complaints for certain reasons, and I am sure you would agree this could happen in some situations. Under this Bill 7 there is no penalty for making a false complaint, and yet it could do irreparable damage to the individuals involved.

11:30 a.m.

Mr. Dorfman: I think in the pursuit of justice any system which attempts to pursue justice is always going to have a problem whereby the system may be slightly abused. I think the example in human rights is that there is not a tremendous record of frivolous complaints. Certainly under Bill 7 the commission has given itself what I would feel would be more than ample discretion to not deal with the complaint if they don't want to. In fact, I concur with Mr. Argue in that they have very little responsibility to even make the complainant aware, except at the last minute, that they are not going to deal with it because the complainant is not involved in the process.

I think certainly the pursuit of justice demands that you err on the side of allowing the odd frivolous complaint, and I think that just as certain people are charged with criminal things and are found to be innocent and have had to bear a certain amount of anguish, this might be something similar that has to be borne with in the Human Rights Code. That is something that is common to every single aspect of legislation that comes out of this building or Ottawa or wherever.

Mr. J. M. Johnson: I think you refer in previous pages to where Bill 7 does differ from civil rights in some instances, and this is one case. If an individual were to bring a false complaint against someone, they would be subject to civil action.

Mr. Dorfman: Malicious prosecution.

Mr. J. M. Johnson: Yes, but under this they are not. I realize the intent is there to give the individuals free access to lay complaints, and then hopefully they don't abuse it. My concern is how you protect the other party--and I am sure you are in no

way defending people of this nature. Would there be anything feasible in having some type of protection set up that if a certain individual constantly laid complaints they would be considered something out of the ordinary, something different?

Ms. Ritchie: In answer to that point, I think it is worth looking at section 30(1) which, as far as we are concerned, gives the commission all the scope it needs to deal with exactly this kind of problem and especially at section b, "the subject matter of complaint is trivial, frivolous, vexatious or made in bad faith." That allows the commission, in its discretion, not to deal with the complaint. We feel that is more than adequate to deal with that situation.

Mr. J. M. Johnson: I realize that, but the concern I have is the individuals involved have to go through the process whether they are innocent or guilty. If one individual is constantly laying complaints that are found not to be factual at some time, what action is taken? In this instance, none.

Mr. Dorfman: You could have the same person laying an information at the justice of the peace, and there is a test that is set up in the law for malicious prosecution. I am not saying we would agree that be applied in human rights cases, but I know it is a very strong test and a very difficult test to meet malicious prosecution. I don't think even applying that would solve the problem you are talking about. I think it may be an inherent problem in the law, and it is one that doesn't present itself that often that I am aware of. It is a lot of work to file a complaint; it is not something that you can do frivolously.

Mr. J. M. Johnson: I won't pursue it, but I do raise the concern I have.

Ms. Copps: On page three, where you are talking about the existing code being a little clearer in setting out the accepted standards of conduct, what is included in the old code that is omitted in the new? I don't have a copy of the old code here. On page three, at the bottom, you say, "The existing code is a little clearer in setting out accepted standards of conduct in Ontario's work places." I don't have a copy of the old code and I wondered what section you felt should be included in the new code.

Ms. Ritchie: We are speaking in the old code specifically under the old section 4(1) (e), (f) and (g). The reasoning there is twofold. First, from a legal perspective, we feel it important that as many bases be covered as possible. We do not feel that the new section 4 is adequate in that regard. The other lays out more objectionable practices.

Secondly, we feel, as another member pointed out earlier, there is a role for legislation in a preventive fashion. In other words, this code is read by employers presumably. Presumably there is some educational work done so that employees have an idea of what is in the legislation. To that degree there may be a preventive role for the legislation here where it does lay out more specifically some of the objectionable conduct.

Ms. Copps: The reason I asked that is that again you get back to your inclusion-exclusion argument. If you include too many separate instances, then presumably at some time in the future a judge may decide because that area is not included it is not covered.

Ms. Ritchie: I assume there is some legal means to identify those as examples rather than exclusive areas. We would see the present one's retention in Bill 7, the statement in Bill 7 under 4, "the right to equal treatment employment without discrimination." We would see the retention of that with the addition of the old (e), (f) and (g), and perhaps taking into account your point in the legal drafting of it.

Ms. Copps: Also on page five, when you do talk about your belief that section 12 should be strengthened, is there any legislative precedent for that kind of an amendment, or have you just drafted the wording yourself?

Mr. Dorfman: No, we have not. I think the crucial point to that is the test of what is discriminatory--whether you have to prove on the balance of probabilities that it is discriminatory or whether it is absolutely discriminatory. That is my understanding. The test at present is it has to be absolutely discriminatory. That fails to come across. In many instances what is most discriminatory about a piece of literature is the context it comes out of and what it implies in terms of its symbolism. For instance, the Klan is smart enough to know not to print anything that looks absolutely racist. They talk about the "white knights of the society" and they talk about leadership to promote--

Ms. Copps: My understanding is that your criticism would be primarily directed to written propagation of those claims.

Mr. Dorfman: That is what section 12 speaks to, yes.

Ms. Copps: In your talking about strengthening here, you just say "the expression of criticism." For example, I could say something to somebody which could be construed as whatever.

Mr. Dorfman: Section 12 refers to dissemination of discriminatory matter. Maybe that should have been clearer.

Mr. Eaton: I am really putting a question to you and some of the people involved in this. On page six once again we get references to Ku Klux Klan stuff. It refers to the company president being asked why he never took a notice posted on the board down for over six weeks. What would concern me would be why someone else who was in the plant every day did not rip the damn thing off the bulletin board the first time he saw it. This concerns me a bit. You are trying to put the onus in many cases back on the president. We have reference in there that if somebody within a plant discriminates, the directorship, the management, or whoever might be in charge, becomes responsible for that discrimination.

I feel a little concerned that the onus is always placed on one person. Maybe the manager--by the looks of it, he did see it

too--would be rather lacking for not ripping it down himself. I think all the people would be lacking in that regard. That is just a concern. It is everyone's responsibility. We get harassment not because of sexual things or because of racial things. Sometimes people get harassed by other people working with them just because of the nature of the individual. That is one area we have left out. That sort of thing does go on, where people will pick on somebody just because of his character.

11:40 a.m.

Mr. Dorfman: I would respond by saying that I would hope that people would be in a position where they could easily take that thing down. I can only respond that if it were I it wouldn't have been up for five minutes. When people pointed out the notice to me, first I did not believe it; second, they felt scared to take it down because it was the company board, and I know that certainly in a unionized plant you can't take things off the board without being disciplined. The context that it was put up in, which was an ongoing union organizing campaign, made it not your average situation.

At the same time, people thought to themselves--

Mr. Eaton: Likewise, not knowing who put it up, if somebody took it down nobody would know who took it down.

Mr. Dorfman: Right. But once it was up and the company didn't take it down, it got very complicated. People said, "Well, if the company isn't taking it down, I ain't gonna take it down." What's it about? It's not often so straightforward. And, of course, these people were the victims of the plant who would have to go and take it down. I know the people were very affected by it and very hurt by the notice being up. I would agree; I would hope that people would go and do something like that even if it implied civil disobedience. From my experience as a trade unionist, I would say that it would require a little bit of civil disobedience inside the plant to go and do something like that. I'm a strong advocate as well.

Mr. Eaton: I don't know whether it is covered or not, but suppose there are 10 white people, Anglo-Saxons, working together or we have 10 Chinese people working together and they start picking on somebody just because of his character. You know that kind of thing happens. How do we cover that in here?

Interjection: It's not covered in any way here.

Mr. Chairman: On the basis of character or lack of such?

Mr. Eaton: They pick on a person because of his personality sometimes.

Mr. Brandt: They don't like him, but not necessarily because he is Chinese. Is that what you are saying?

Mr. Eaton: I mean, we all pick on Andy at times.

Mr. Brandt: You do that all the time anyway.

Mr. Eaton: Is that covered in any way? Some of that is more abusive than some of the racial discrimination that might go on in a case where somebody makes a crack or two and it's dropped.

Mr. Brandt: I think that is really a common-sense element in the bill. I don't think it's intended to stop the normal by-play between individuals who, irrespective of their colour--

Mr. Eaton: But some of that by-play becomes very abusive.

Mr. Brandt: That's a question of judgement, though. If one of the individuals is hurt to the point where he feels he is being discriminated against, that's different from my accusing you of being a farmer and meaning it in a derogatory sense, or your saying that I'm a city slicker because I represent an urban riding, or whatever. I don't think the bill was ever intended to stop that kind of dialogue between individuals.

Mr. Eaton: No, but that's not what I was getting at. I was getting at situations where sometimes, because of a person's personality, he may take things a little differently and people will start to pick on him. It's not a racial thing. How do you get at something like that?

Mr. Brandt: It's the commission's responsibility to determine whether or not the complaint, if it's initiated by that individual, is frivolous.

Mr. Eaton: I don't think it's a clear-cut case.

Mr. Chairman: I don't think you get at it through the Human Rights Code.

Mr. Eaton: I think it's the right of the individual to have some protection from that sort of--

Mr. Dorfman: I would say that if it was in a factory he should have recourse to his supervisor because when one is subject in the context of employment not only to whatever the working conditions are, but also to some kind of abuse from someone, I think there is some onus on the employer to be aware of and deal with that. That's really what we are referring to in this Public Service Staff Relations Board decision which pointed to that kind of situation.

Mr. Chairman: We have two more and about another five minutes.

Mr. Eakins: Just briefly, under public profile on page eight, I think the public profile is very important. I think that really tells the work of the commission. There's a lot of work to do under that.

I agree completely with B, but C rather bothers me. To intervene in problem situations in the community, is that following a complaint or without complaint? And how would you intervene in problem situations in the community?

Mr. Dorfman: To give an example that was discussed with Mr. Argue--I was sitting back there and churning a bit--I was thinking that one of the things which might have been said, and I know this from my own experience, is that a lot of immigrants to this country don't know what the Klan is. They only know that it's sinister, but they don't know where it comes from, and they are the victims of it. Then there are a lot of people who are also the promoters, who may be new immigrants or who don't know about the Klan. There is very little around that tells you what the Klan is, and I think it would be a great service if the commission would put something out and say, "This is the Klan," so people would know what it is.

Mr. Eaton: That has already been given too much publicity.

Mr. Dorfman: I don't think so. That's a separate issue.

Mr. Eaton: They thrive on it.

Mr. Dorfman: But if the Klan has already presented itself in a neighbourhood and it assumes a certain meaning within that neighbourhood, say, in Parkdale or Riverdale, and if the Klan is presenting itself in a disturbing manner and people don't see the Klan for what it is, don't know where it comes from, don't know what it is promoting or what it has created in the past, I think that is important.

Another idea of intervention is that I know areas where my members live where there are no longer only nascent problems but very active racial problems. It doesn't mean that the human rights commission sets up a tent in some shopping plaza and says, "Let's cool it." It means getting involved in some nitty-gritty kind of co-ordination of social services in community organizing work. Every social service has its people out in the field where it needs some co-ordination, putting some racial education into the schools in that area, co-ordinating it from the point of view of the preservation of people's integrity and of human rights.

It seems to me that in Toronto you have a mixture of people that is unique for a country, unique in the world. You have people from every part of the world who have never seen each other before. I think the commission has to play a role in that because it inevitably leads to problems. It inevitably requires a lot of work to make sure that that doesn't become a problem, and that people in their ignorance or in their lack of understanding or in the way that they assign their own problems don't ascribe racial motives to the way other people act. This isn't a homogeneous society any more, and it requires a real change in the way in which we deal with human rights. To me, that says it's an advocacy approach to those things.

Mr. R. F. Johnston: That was very thought-provoking--not outrageous--presentation you made. I could ask a lot of questions. I will try to limit myself to just a couple for clarification.

When you are dealing with the whole matter of the definition of grounds for discrimination, bringing in the matter of the

humane, the concept of humanity has been part of the nature of what we are after in terms of the civilized approach to nondiscrimination. You then bring up a couple of instances, like equal pay for work of equal value and the whole problem of pregnancy discrimination, that sort of thing. You don't deal particularly with what Mr. Argue talked about, which is the definition at the beginning and the fact that it is exclusive and not inclusive. Could we have you feelings about how you would see that being dealt with?

Ms. Ritchie: I think we made a proposal here that speaks to it, perhaps not in the same way as Mr. Argue did, though again it's the same point. I think that legal minds should be brought to bear on the subject if it is the intent of this committee that it would not take an exclusive approach.

Our proposal was the addition of the word "humane" in section 4 dealing with employment issues for the reason that, as it stands now, it really should be called the Ontario antidiscrimination code; it is not really a human rights code. We are quite aware that the whole drift or thrust of human rights legislation is exactly in the area of antidiscrimination. However, we think that somewhere some jurisdiction has to start striking out in new fields. We gave an example here. Maria Iori is the president of the local at Puretex. We spent many long months before the commission on this subject.

The strangest example, but I think the one that makes it very clear what the problem is here in an interpretation which is exclusively anti-discriminatory--and I am not in a position to give the details, because it was never followed through to the final stages--but in the investigation of the case that took place in the Toronto underwear store what had happened was that one of the female salespeople had been advised by the owner that basically she had to solicit with the regular male customers that were coming in. She laid a complaint. She was not willing to go out on dates with regular customers.

11:50 a.m.

In the course of the investigation, it came out that the salesmen there were having to take an equal position with the regular gay customers in the store. I cannot go into the details because it never came to the final stages. The woman abandoned the case, having seen the thinking of the commission on this. Their position was that as long as everybody is equally sexually degraded, then the world is fine. That is the scope of our legislation.

That is an extreme example but it is the thinking that follows in all of the investigations. It is one that we ran into in a case that was of major substance; that was the use of electronic surveillance for watching people in the plant during the work day. It is a damned shame, really, when you have to take on a three-month strike and go to an arbitrator who finally reasoned, as we think the human rights commission should have reasoned, but it took a three-month strike to do it.

Ms. Copps: May I ask just one question on that subject that you raised? Did the commission suggest that she had recourse to laying criminal charges?

Ms. Ritchie: Pardon me?

Ms. Copps: Did the commission suggest that this woman lay criminal charges? It would seem to me to be under the Criminal Code.

Ms. Ritchie: Not that I am aware.

Mr. R. F. Johnston: I won't go into the hate literature. It is a really vexed problem for me in terms of how we don't take away somebody's rights to be boldly expressive whether in a political field or whatever, but at the same time protect people from the results of that kind of expression. I am not exactly clear how the way you are wording it makes it tougher than what is in 12 right now, which talks about intention. Yours does not talk about intention; it talks about actual kinds of results. But it is thought provocative. We will look at that in detail as we get more and more people coming in.

The processing of complaints is always a problem. The backlog is reduced but it is still substantial. I gather there are 900 still at this point. I find your suggestions interesting but I find them hard to put together with what Mr. Argue was saying--to which I gather you are sympathetic--which is the notion of the complainant not being excluded from that first step.

What you have here is a 45-day limit and then there has to be some kind of action in terms of an inquiry. What about the nature of things in terms of the involvement of the complainant in the process which is not presently in the act?

Mr. Dorfman: I think there has to be a system whereby the complainant is made aware of what is going on, the stage the complaint is at. I think a lot of the problem is that people go into these things with expectations that something is going to be resolved and nine months later, when they have dealt with it on their own terms--and by the way, they have had to--they get this thing from the human rights commission, "Hey, let's look into this." Whatever has happened is finished and it is very hard to remedy. It is only the exceptional case that can be remedied after such a long period of time.

I don't know that there is a solution. I think the 45 days at least puts it in a fairly close down to low kind of situation. It is meant to force the commission to deal with it right away and to give someone that immediate feedback.

I recognize the problem of the commission if they had to be constantly spending all their time giving feedback to the complainants. It is very difficult. As a trade unionist, I know what it is like when someone has a grievance and you have to be constantly getting back to them. It is a very trying process. You tend to set up a system that is a fair expectation from them that

it is a fair amount of work for you. I think some kind of balance has to be worked out. You can't be coddling the complainant, so to speak. I can understand the commission having that concern.

I think if a realistic reporting back system is set up-- I know the Workmen's Compensation Board is now setting up a system whereby there is a regular reporting back. Something similar should be set up into this. But if it is only 45 days until you get that board of inquiry notice, that is not so bad. I think a letter or two in that period would suffice. I mean, the intake is one contact. If there was an investigation with an investigator, let's say four weeks later, and a determination in the last two weeks by the commission of what was going to happen, I think that is fair. I think Mr. Argue would probably agree, if you are talking about a 45-day cutoff.

Mr. R. F. Johnston: One other item, if I might, is just a comment on the business of being able to lay a complaint and use a group or collection of complaints to make the one complaint valid. I have raised one case which involved three women being discriminated against at a local organization in Toronto, but none of them had a substantial enough case on an individual basis. Together, it obviously proved that there had been discrimination. They were unable to make a presentation as a group. They had to do it only as individuals and were advised continually about that. In the end they never made their complaint official because they refused to go in just for the sake of losing, as they felt they would. I think that is an important point to raise.

The other thing that you raised and that others have not raised as much as I had expected them to do, is the business of the power to order, rather than just the power to recommend, action, especially in terms of special programs of affirmative action. You have the same concern I do that recommendation is too light and there would not necessarily be any action taken.

Mr. Dorfman: Agreed. In the case of an employer, there is a tremendous financial consideration, if there has been an injustice which has come about because of certain systems built in, let say, into hiring practices. If, let's say, it requires an employer to hire women, he may have to build washrooms for women where there were never washrooms before, and why should he have the expense.

If it is just a matter of recommending it, anyone could have gone in and said, "I recommend he do it." There is no power on it. If this is meant to have teeth, put the teeth in the mouth; otherwise there is something too obliging about it. If it is wrong, like in every other legislation, you have the power to do something about it, not just to recommend or conciliate or whatever.

Mr. Chairman: Thank you very much, Mr. Dorfman and the other members of your organization for appearing today and giving us your views. I assure you they will be considered.

Marjorie Carroll is here, representing the Association of Municipalities of Ontario.

Ms. Carroll: Thank you very much, Mr. Chairman. As you are probably aware, I am representing the Association of Municipalities of Ontario. I am Marjorie Carroll, the mayor of the city of Waterloo. I co-chair the labour relations committee for AMO. With me today, and I have asked them to join me to perhaps assist in any questions you might have, is Gerry Hyde, the personnel director for the city of London, Jack Yeo, who is the personnel director of the regional municipality of Niagara, and Terry Hallman, the personnel director of the city of Waterloo and president of the Ontario Municipal Personnel Association.

Lest you think this particular AMO committee is heavy with municipal staff, that is not so. We have a very important balance of elected officials and staff. It is just that today, as I am sure you are all aware, is the day that all municipalities seem to be coming off their summer schedules into some pretty heavy work loads and as a result many of the elected representatives, because of distance to travel, such as those from Kingston and northern Ontario, were unable to attend today.

I am also sure that you are all aware of our association and what it means. It is nice to see a former municipal colleague on your committee, Mr. Brandt.

Mr. Chairman: Sort of on the committee; he is representing the minister.

Ms. Carroll: Is he? My apologies.

Mr. Brandt: That is all right. It is nice to be here and it is nice to see some of my former colleagues.

12 noon

Mr. Chairman: We are delighted to see the AMO here. I look forward to your brief.

Ms. Carroll: Thank you, Mr. Chairman.

The Association of Municipalities of Ontario wishes to present its concerns on the recently proposed Bill 7, an Act to revise and extend Protection of Human Rights in Ontario.

The association wishes to record that it fully supports the principles contained within the existing Ontario Human Rights Code in that they recognize that every person is equal in dignity and worth and provide for equal rights and opportunities without discrimination.

The existing Human Rights Code to a large degree accomplishes the objectives that legislation of this nature aims to execute. Citizens should be able to determine their rights and commitments by simply reviewing the law to which they are subject. It should be foreseeable within certain limits what the likely outcome of a legal grievance will be in the event that a violation of those rights is alleged. This way, settlements of such differences can be achieved without the aid of litigation.

We find it admirable that the commission is proposing the revision and extension of human rights in Ontario. However, there is substantial concern on the part of the association that the provisions of the proposed Bill 7, if enacted in their present form, could have a dramatic effect on municipal administration with respect to hiring procedures and collective agreement administration. Rather than prohibiting prescribed conduct, which is the intent of the current Human Rights Code, the proposed legislation creates absolute rights that are covered in wide and imprecise terms.

In reading the proposed act many provisions appear innocuous when read by themselves. However, when read in conjunction with other clauses, great difficulty is created in attempting to interpret the meaning. It is difficult to predict all the ramifications this could produce. We find that Bill 7 as drafted lacks clarity of its intent, and we urge that it be extensively reviewed and redrafted so that rights and obligations are more easily understood. Therefore, the association believes that the Minister of Labour should not proceed with any enactment of this proposed legislation until it has received a more comprehensive review.

I will not read the quote from the Honourable Mr. Elgie, which is in front of you and included in the brief.

In submitting its response the association in some instances provides for specific recommendations with respect to provisions of the proposed legislation and in other instances highlights only our concerns. This submission is prepared only--and I emphasize only--from the point of view of employer-employee relations or for occasions in which applications for employment are involved.

I refer first to section 4, employment, in which all the areas are listed in which a person has the right to equal treatment in employment. I would like to highlight three of those areas: record of offences, family and handicap.

"Record of offences" under section 4 is understood to apply to provincial offences and offences in respect of which pardon has been granted under the federal Criminal Records Act. AMO is quite concerned with the inclusion of this provision. It continues to be our view that it is the right of every employer to be able to consider the record of offences of current and prospective employees. One must consider the implications that such a provision could have on the operation of a municipal corporation.

For example, consider a municipality who invites applications for a truck driver's position. Through investigation it is noted that one of the applicants has lost his licence several times in the past or that enough demerit points have been lost that an additional offence would result in the loss of the driver's licence. Can the employer not refuse to hire the applicant on these grounds? One must certainly consider a clear driving record to be a bona fide qualification for a position that involves the operation of a motor vehicle.

If I might, I would like at this time to cite another example which is not listed in your brief: that of an orderly who may have been guilty of arson or of indecent acts and who applies for a job in a hospital or a regional home for the aged. Can you imagine engaging such an individual and having him in an employment setting where he deals with nonambulatory persons unable to fend for themselves?

It is obvious that that kind of record is important in the selection of staff for hospitals and homes for the aged. Surely the employer should have the right to refuse on such grounds to hire an applicant for such a position.

We now refer to family. "Family" means persons in a parent-and-child relationship. A number of municipal corporations have policies whereby they do not have to hire close relatives. This is particularly important in public employment such as municipalities, where implementation of the policy means that every position advertised is really open to the best-qualified person and is so perceived by the public. In view of the experience of various municipalities we believe that there should not be any language in a revision of the Human Rights Code that would prevent the retention of such a policy.

Handicap. There are three sections in reference to handicap: section 9, which is the definition of handicap; section 16; and section 38, orders of board of inquiry.

The terms used in the above three sections are so vague that they do not give adequate guidance to employers. They leave the employer completely at the discretion of the board of inquiry's decision as well as the regulations, which are unknown at this time.

Whether or not a person suffering from a handicap can perform the duties of a position should be subject to professional medical analysis and opinion. The opinion, once given, should be decisive so far as this act is concerned, and the employer should be entitled to act on that.

The definition of handicap contained in section 9(b) could create difficulties in personnel administration; for example, "...that the person has or has had, or is believed to have or have had..." This preamble, coupled with the broad definition contained thereafter, leaves a great deal to be investigated. This provision should be reworded to provide a more direct and easily interpreted definition.

Further, as contained in section 16, whereby "...renders the particular person incapable of performing the essential duties..." we feel that this provision should be amended to read as follows: "...renders the particular person incapable of performing all of the duties..."

In addition--

Mr. Eaton: You mean all or any of the duties?

Ms. Carroll: All of the duties.

In addition, section 38 gives powers to the board of inquiry whereby they may order that the party take such measures as will remove the obstruction or provide the amenities for handicapped persons; and further, may make a finding as to whether or not the equipment or the essential duties of employment could be adapted by the party who is found to be a contravener to meet the needs of the person whose right is infringed; and may order that the party take such measures as will meet such needs as are set out in the order unless the costs occasioned thereby would cause undue hardship.

In the above-noted clauses the board of inquiry is given the power of modifying the responsibilities of a position by only requiring that the essential duties are to be performed. Boards are also given the power to award that employers take costly measures as will remove obstruction or provide amenities that will accommodate for the hiring of handicap persons. In such cases we trust that boards of inquiry will not act unreasonably in making their awards.

It is not difficult to perceive the complications that could result in attempting to conform to these sections of the legislation. There is a tendency to believe the implementation of these sections will actually establish a type of reverse discrimination in disqualifying all persons who do not fall within the criteria set out in the definition of handicap.

Section 44 states that this act has primacy over other acts. We feel it would be detrimental to safe employment conditions if Bill 7 took primacy over the Occupational Health and Safety Act, and we recommend that Bill 7 be reworded to conform to this legislation, which is to provide for safety in the work place.

12:10 p.m.

We are also concerned about the number of other acts that will no longer take primacy. One of the areas that came up recently in conversations in my own municipality is that the Regional Municipality of Waterloo Act has a retirement age of 60 for policemen written into the act, and this bill will take primacy over that act.

Section 8, infringement prohibited. As written, section 8 is unnecessary to a rational enforcement of the law. Prohibitions and sanctions appear elsewhere in the bill. The act of distinguishing or choosing should not raise any presumptions that a person did so with the intent to violate any provision of this act, and the onus of proof should always rest upon the complainant or upon the commission to establish, on the balance of probability, that a person who chooses or distinguishes has done so with an unworthy intent. This would be in conformity with the Canadian law of being innocent until proved guilty.

Section 10, constructive discrimination. I will not read the quotes from the act that are in front of you, but suppose a person

applies for a job which involves some lifting of heavy objects and the medical examination reveals some pathology in the lumbar spine. The unsuccessful applicant complains on the ground that all persons over 50 years of age have the same kind of pathology and that they were discriminated against on the grounds of age. The permutations and combinations of hidden or unintentional offences are endless.

4. Section 21(1), advertising for employment; section 21(6), special employment; and section 22. The implications of these three sections of the bill represent a substantial increase in administrative time and expense. These sections seem to make it impossible for employers to advertise for special qualifications even when these qualifications are necessary requirements for the job. They limit employers from obtaining specific information on employment application forms. Having limited information creates great difficulty in determining if essential qualifications of a job are met.

The way that section 22 is drafted indicates that all applicants who fall within the criteria set out in section 16 and section 21(6) shall not be refused employment except after a personal interview. There would be significant cost increases to employers if they were required to interview all persons for whom applications were submitted.

An employer should be permitted to establish a short list for interviewing purposes in cases where a substantial number of applications are received for one available position, and in these cases, should not be subject to contravening this act. It is not unusual for any municipality, particularly in the large urban centres, to have 100 or more applications for one position.

5. Section 23(1), discrimination in employment under government contracts, government grants and loans. This section could have drastic implications that apply mainly to public sector employers. Imagine a situation in which a municipality decides to build a road. Someone, somewhere, alleges that this municipality has infringed some provision of the bill. In such a case, the grant for the road construction could be withheld until the allegations, no matter how groundless, are investigated, which may take several months.

Similar consequences are not applicable to private sector employers in that their establishment can continue its operations, as they do not rely on government funding. Again, this seems to imply a reverse discrimination directed to public sector employers.

Section 35(1), appointment of board: The proposed legislation notes, "Where the commission requests the minister to appoint a board of inquiry, the ministry shall appoint..." whereas the existing Human Rights Code, section 14, states, "...the commission shall make a recommendation to the minister as to whether or not a board of inquiry should be appointed, and the minister may, in his discretion, appoint..."

We feel the decision made by the minister to appoint a board of inquiry is an effective process in determining justifiable

complaints and eliminating those that are frivolous. We therefore suggest that this process not be eliminated and that the minister continue to have the power to appoint a board of inquiry at his discretion.

Section 42, acts of officers, et cetera. This provision institutes that the onus of all employee violations is to be placed on the employer. We submit that this section be amended to provide that employers not be responsible for employee violations in cases where the persons were acting outside the scope of their authority or in situations where the employer was unaware of the employee's actions. In these cases, acts of this kind should line down to people.

In conclusion, it is clear that the act has been drafted in a manner that will leave a great deal to be interpreted by the human rights commission, boards of inquiry and, further, the Supreme Court. The proposed legislation provides inadequate guidance to employers in interpreting the intent of this proposed legislation.

The AMO municipal labour relations committee, having met with representatives from the Ministry of Labour and the human rights commission, was informed that the interpretation being perceived upon reading this legislation was not the actual intent of this bill. The intentions, no matter how admirable, are one thing; however, the actual interpretation or implementation of certain provisions are quite another.

The concerns in this report are some of the most apparent ones that will affect employment situations. Although this report does not address the proposed legislation as it relates to the occupancy and provision of accommodation, the implications would seem to be as intense in this regard. We therefore urge the minister to review and redraft the proposed human rights legislation, taking into consideration our comments on selected provisions and, most important, in an attempt to make rights and obligations rational and clearly understood.

I thank the committee very much for your time. We do have the final page with a summary of recommendations. I think the only comment that I might make on the summary of recommendations is on the last item on 10, in which we suggest that the association believes that the minister should not proceed with any enactments until it has received a more comprehensive review. We realize that this is exactly what you are doing right now. When we drafted this we were under the impression that the government was going to move quite quickly with enactment of the bill.

Mr. Chairman: The government never moves that quickly.

Mr. Riddell: Let me say I personally feel that your brief gives this committee a breath of fresh air after some of the briefs, with which I have had to take a little difference, let me tell you. The one question I have is in connection with the policy of some companies not to hire relatives. You indicated that policy should remain.

What do you suggest would happen if a relative, maybe a cousin, made application for a job and had by far the highest qualifications of any of the applicants? Would you maintain that that policy should still remain in effect and that they would have to totally ignore that person because he happens to be a relative?

Ms. Carroll: I think cousin is probably going too far. The definition of family is--

Mr. Riddell: Okay, let's say a brother or even a father. I have a situation in my own riding where a father would like to become employed with this particular company and because of their policy he cannot become an employee because his son is working there. Yet the father has by far the highest qualifications of anyone that I know who has applied for the position. Do you feel the company should be able to retain that policy of not being able to hire, say, a father, a brother or even a sister?

12:20 p.m.

Ms. Carroll: The thing that came out in all of our discussions with all of the municipalities, and this interestingly was approved unanimously by our AMO board of directors which is some 80 people representing a large number of municipalities, that they wanted to have the choice of having that policy or not. They certainly understood that in some of the smaller municipalities that that could not occur, that some wanted to have the best possible employees for the job. However, in many of the municipalities there has been considerable concern of the public perception of hiring practices. When brother, father, son, mother, daughter got a public job the implications were so great that it has really compelled quite a number of municipalities to adopt a policy not to hire immediate family relatives. Perhaps some of the other members of the committee would like to enlarge on that.

Mr. Coleman: One of the problems that comes up with that type of policy could be companies too as well as the public sector. In many of the larger ones you have collective agreements, you have certain rights under that agreement, perhaps moving from one department to another, and while you may wish to hire someone in a particular area the other member of a family could be a supervisor. So you say that you will hire him in this area then he is not supervised by that member of the family.

The things that cross over with collective agreements, and the way people can move in the organization or promotional aspects and everything else can create problems down the road that you cannot enforce any more. I do not think that in most major municipalities there is a great deal of problem with the number of applications for jobs. Whether a person with family would be absolutely the best qualified for that job I would suspect there will be some more. I think the options are there.

Mr. Riddell: The second point I want to bring out is your concern about this bill as having primacy over every other bill. Could you give me an example of where it would be detrimental to have this bill being superior to, say, the occupational health and safety bill?

Ms. Carroll: I think the prime concern has to be, particularly if you are employing handicapped people, the safety in the work place. Safety in the work place must take primacy. You cannot subject people to unsafe conditions in order to protect them from discrimination in other areas.

Mr. Brandt: This bill does not in any way negate the characteristics of the Occupational Health and Safety Act. It is not intended to do that, and it does not do that. By having primacy over it, if there is some contradictory aspect of the bill as it relates to that particular act I can see it but it does not have any contradictory areas of it that would diminish the powers of the Occupational Health and Safety Act. You used that one specifically which is why I am addressing that particular point. I do not know why you used that example because there is nothing in here that would suggest you are diminishing or watering down what is in the other act.

Mr. Yeo: It seems to me that if you are employing handicapped persons in some factory type settings, are you not imposing an unsafe condition on co-workers, which would be a violation of the act?

Mr. Brandt: The bill very clearly says that where a requirement, qualification or consideration is a reasonable and bona fide one in the circumstances. Maybe this is a bad example but one that comes quickly to mind: if you had a transit worker, and the person only had one arm and it required the shifting of gears and the steering of a bus, quite obviously that particular handicap is a bona fide reason for not hiring somebody who only has one arm. So it has to be in a situation where the handicap does not affect the actual work that is carried out by the employee. Again, it is a common sense relationship. But where an employee who is handicapped may bring about some safety considerations that are concerning you, then that person in all probability would not necessarily have to be hired under the intent of this bill and you would not be discriminating against him.

Mr. Yeo: Perhaps the difficulty is in the definition of bona fide and who is going to make that determination. That gives us all some concern. Are two legs rather than an artificial limb a bona fide requirement for firefighters?

Mr. Eakins: If a person says they are capable, who would make the decision?

Mr. Brandt: Well, the last judge in this instance would be the human rights commission if there was a question of some interpretation, but I think again you have to use some common sense in your interpretation of what the bill intends. Certainly, there are all kinds of employment situations that I can think of where you couldn't hire a particular handicapped person, but the intent of the bill is to not stop a handicapped person from doing a job. As an example, a telephone receptionist may not require both arms to carry out that particular function, but there are situations right now on employment applications where that person

would not be able to apply for the job or where it would be very difficult for them to apply for that particular job even though the use of both arms was not absolutely necessary.

So we are trying to get a balance between the two and again I think there is a common sense approach to how you interpret that bill. It very clearly indicates that where there are bona fide reasons for not hiring a person who is handicapped, to use just that one area of the bill, you don't have to hire them and certainly you wouldn't be placing the other employees who are in that particular department or division in a position where their safety is in question. The bill does not imply that you have to hire them and go through that kind of thing.

Mr. Yeo: Perhaps that is the difficulty we are having with some parts of the bill.

Mr. Brandt: I think it is a matter of clarification and perhaps some reworking of some of the wording as opposed to the intent of the bill. As I read through this, and looking at it as a former municipal politician I can understand your concerns but in any discussions I have had with ministry officials or certainly with the minister himself it was never intended that it be as confining as perhaps you are interpreting at the moment. When I got to the end of your brief, I noticed that was exactly the response you got when you spoke to ministry officials when I originally got the call from Mr. Dunbar to set the meeting up.

I think we can clarify some of those areas for you, either in terms of the regulations that apply to the bill or in terms of the reworking of some of the wording that is applicable to the bill. I think that can be done.

Mr. Riddell: Finally, Mr. Chairman, I share the concerns of the representatives from AMO if, indeed, all applicants have to be interviewed. Is there anything in the bill that states that every applicant has to receive an interview?

Mr. Brandt: I have a question down on that one myself. I don't know the answer to that, but I will check that out with the minister. Joanne, do you know or is there anyone here from the ministry who might be able to respond to that question?

Ms. DeLaurentiis: The intent of the bill would want to see that every applicant (inaudible).

Mr. Chairman: You will have to come up and speak into the mike to be on Hansard.

Mr. Brandt: Why don't you come and sit beside me. I promise there will be no sexual harassment.

Ms. DeLaurentiis: As I was saying, the intent of the legislation is this: if an employer gets 200 applications, which happens I know, as long as the employer does not go through those applications and decide, "I don't want any people with a physical handicap in my office; I don't want people who are a different colour in my office," and only considers the basic requirements of

the job, then those are the only people they have to interview. They don't have to interview 200 people.

Mr. Eaton: How is he going to know whether they are coloured or not? Surely that is not a question that can be put on an application.

Ms. DeLaurentiis: Exactly.

Mr. Coleman: If I may clarify, I think it is reading the section 21, those two parts, and section 22 together. Perhaps, as you have mentioned, if it could be looked into, because right now it certainly seems to imply that there are going to be a number of areas on which you will not be able to ask on an application form to start off with.

Mr. Brandt: That is correct.

12:30 p.m.

Mr. Coleman: When you receive all those applications then you will really, in many cases, not be aware of a handicap. You will not be able to ask it in the first place. So, you are going to have to make a judgement on taking those 200--and that is a small number compared to some jobs; they go up to 1,000--to get them down to a short list. We feel, reading those three sections, that someone that was not interviewed could raise a valid case of discrimination because they did not receive a personal interview.

Now, it was explained to us at the meeting with the people from the Ministry of Labour and human rights that that was not the intent. We would just ask you please to make sure that the intent is very clearly set out as to how these will be handled; that you can short list without discriminating against maybe another 100 people that did not receive an interview.

Mr. J. M. Johnson: I would like to compliment Mayor Carroll for her presentation on behalf of the Association of Municipalities of Ontario. I would like, also, to concern myself just briefly with two points, one and five of your brief, and the one regarding criminal offences.

To you, Mr. Brandt, former mayor of Sarnia, I would throw the type of case that could occur. From the neighbouring municipality of Palmerston, recently, the town clerk was charged with absconding with \$250,000 or thereabouts. I think he was sentenced to two years. In that period of time he will have served his sentence and paid his debt to society. Now, would it be correct to assume that if he made application for the position of clerk-treasurer in the municipality, they would have to hire him?

Mr. Brandt: The bill points out that where there are bona fide reasons that person should not be hired, it is not necessary that he be hired. I would think that would be a bona fide reason, yes.

Ms. Copps: Is there not another form also which states that if that is a federal offence, he has to apply for and receive a pardon also, so he would have to have a pardon first--

Mr. Brandt: That is right, to have it wiped from his record.

Ms. Copps: --and then bona fide reason.

Mr. Eaton: What about the case they referred to in hiring a trucker?

Ms. Carroll: Can we ask him how many demerit points when he applies for the job?

Mr. Kennedy: I read the section about a federal offence that pardons be granted, but it is silent with respect to a provincial conviction. How does that get cleared away, if there is no provincial pardon comparable to the federal pardons?

Mr. Brandt: It refers to the provincial enactment on page four.

Mr. Kennedy: That is conviction in respect of any provincial enactment. That conviction stands. I do not think that record is ever quashed or pardoned, as in the federal case. There is discrimination between whether you are convicted under a federal or a provincial statute.

Ms. Copps: Under a provincial statute, it is not a federal offence. Under the federal Criminal Code, you are considered to be "a criminal" and you receive a pardon for that offence. Under a provincial statute, if you are convicted of a speeding ticket, it does not put you in the same situation. My understanding is that even in the Ministry of Transportation and Communications, when a certain time period has elapsed, automatically that blight is wiped from your record without application.

Mr. Eaton: It is not wiped from your record, but you get your points back. It is still on your record. The driving record you are referring to is still there. You can get a rundown of the driver's licence and so on.

Mr. Chairman: I think the point has been made. I believe you wish to make sure that that is addressed. That is fair.

Mr. J. M. Johnson: I have one last, short question. In the presentation, in section five, pertaining to government grants and loans, is it feasible that road construction could be held up by all negotiations of this nature?

Mr. Brandt: I think it could be.

Mr. Eaton: I had it all figured out that we were going to get complaints in Sarnia, and that we would use that MTC money in Middlesex while this is going on.

Mr. Brandt: Actually, that MTC money in Middlesex is for the same job that is going on in Sarnia. It is for the extension of the 402 Highway, so do not worry about that.

We can check into that as well. I think AMO makes a good point in that respect. We will definitely clarify that. I think there could be a possibility of work being held up by discriminatory complaint, or whatever, and the municipality could be caught in a vise not of their own making. It could be a subcontract job that was issued to another contractor, which is an extension of what you are talking about. That could also raise concerns.

Mr. Chairman: You are saying that is not the intent.

Mr. Brandt: It is not the intent and it should be looked at. That is the parliamentary assistant for MTC talking over here and looking at his badly embattled budget.

Mr. Coleman: It was pointed out at the meeting that the people from the ministry did not feel that was really the intent. They were really after contracts, to enforce that contracts would come under the act. But it certainly does seem to be permissive. Whether it would ever be enacted, I do not know, or whatever would be put into effect. But it sure seems to be one that could be.

Mr. Brandt: You have to go back to the other part of the bill which talks about frivolous complaints. There may be a frivolous complaint by another contractor, say, who did not get the tender for whatever reason and then decided to launch a form of harassment complaint against the municipality or against the contractor working for the municipality. It would then be a judgement call on the part of the commission whether or not they pursued it and whether the work would be held up and so forth. But there is a sort of safety valve clause in the bill that would allow for relief of the kind of concern you are suggesting.

Mr. Coleman: I guess the fear is that if it was ever used, by the time things were straightened out, even the delay could cause serious problems.

Mr. Brandt: Very much so. The construction season, as an example, could be missed, and you could get into another year with all of the attendant increases in prices and so forth.

Mr. Chairman: We have about five minutes. Mr. Kennedy?

Mr. Kennedy: I just wanted to ask a question of Mayor Carroll on age of retirement. You mentioned that police retire in Waterloo at age 60. Is that compulsory?

Ms. Carroll: It is written into the regional act.

Mr. Kennedy: Does it only apply to police?

Ms. Carroll: Yes.

Mr. Kennedy: Is it a position of AMO supporting that, or were you just stating it as an aside?

Ms. Carroll: I was just speaking of it as an aside, with this bill taking primacy over all other acts. How do we deal with that being written into the regional act? If a couple of the policemen decided that they were not going to retire at 60, how do we deal with that? It is unclear what will happen to the other acts if this bill takes primacy.

Mr. Kennedy: Do you have any problems that way?

Ms. Carroll: We foresee that coming. It has not happened with the regional police, but it has happened in our own fire department. It is written into their collective agreement. A couple have come to retirement age and they do not wish to retire. So we certainly can foresee this problem arising more in the future. I think there is no question that many of our people's physical fitness level has increased over the last few years. They are no longer prepared to retire at the age they were negotiating for several years ago.

Mr. Kennedy: There are a number of cases that we all know of where there have been successful appeals against that. It is going to become more prominent.

Mr. Eakins: I just want to add that I am delighted to see the brief. I think it is an excellent brief, and I compliment the association for putting it together and being here today.

Ms. Carroll: Thank you very much.

Mr. Brandt: Could I make one point of clarification that I think is important before Ms. Copps gets her chance to ask her question? Keep in mind that with respect to pages eight and nine, it is very clear. I was trying to find it in the bill but I cannot put my finger on the wording. Perhaps Joanne can when I make my comment.

In all instances the employer must know about an act of discrimination or of some kind of a problem, harassment, sexual or otherwise, going on in the work place. The bill does not intend that you be all-knowing, in that being ignorant of a particular problem going on, that the commission can act against the municipality. The bill implies that where it is brought to your attention as, say, where an employee of yours says, to give you a specific case, "We are working in an office situation and the mayor is sexually harassing one of the secretaries"--to use an example that Jack would like. In that particular instance, if the municipality did not act on the complaint--it was brought to its attention, it knew about it, and it did not take steps to correct the situation--the way you have this worded it sort of implies that the municipality is supposed to know about it through some form of osmosis.

12:40 p.m.

The bill very clearly points out that where you are in fact not in a position to know--it's on page 14: "(f) where the complaint is of an alleged conduct constituting harassment..., any

person who, in the opinion of the board, knew or was in possession of facts from which he ought reasonably to have known..." I think that's the key wording there: "ought reasonably to have known." In other words, you can't turn your head from a problem that's very apparent in the work place; you have to be aware of the problem before the commission would act against it. It's not expected that you would--

Is that fairly clear? I think you are implying something that is not in the--

Mr. Yeo: This provokes a comment from me. Under the existing legislation our municipality right now is in the process of going before a commission hearing on a charge of sexual harassment. We had no knowledge whatsoever of the alleged complaint until the day the investigator from the human rights people walked into my office. Now that seems to be contrary to what you are saying in this case.

Mr. Brandt: I can check on your specific case. Certainly that's not the intent. The harassment charge you are talking about probably came in before. This bill was not passed yet. That was under the old code. That's what I am saying. It is very clear under this particular code that you have to be made aware of the situation before the complaint is followed through.

Mr. Yeo: In that case that's an improvement. That's good.

Ms. Carroll: You, sir, have used the word that has concerned us all the way through. I think almost our entire brief is that the intent is not clear. We do not want to be caught later in situations that are going to be extremely difficult to resolve.

Ms. Copps: One omission I was surprised about is that you do not make any comment about what have been commonly known as the search-and-seizure provisions.

Ms. Carroll: I am sorry. I couldn't hear you.

Ms. Copps: You don't make any comment about what has been known as the search-and-seizure provisions whereby the commission has the authority to come into any office, any place other than a domicile, and take away information and material that would be deemed beneficial to the investigation; and also the fact that you can be interviewed by a commissioner without a third party being present, if it is the wish of the commissioner. I am surprised that you didn't comment on that.

Ms. Carroll: As we said at the start of the brief, our committee certainly did not cover the whole bill at all. We attempted to select areas that had to do specifically with employer-employee and employment situations for a municipal corporation.

Ms. Copps: The reason I asked that is that there has been quite a bit in the press about employers who are very concerned about their rights as employers in terms of having documents seized, et cetera. The other question I have on that point--

Ms. Carroll: Before you go on, I might mention that at the AMO convention one of the municipalities did bring that issue up as a late resolution. I must admit that our committee certainly did not address it.

Ms. Copps: Will you be submitting another brief as the community at large? You have taken a stance here on employer-employee relations per se, but I think there are probably other aspects of the bill that transcend simply the employment situation. I just wondered whether you as representatives of the people would be submitting another brief that would deal with the general intent behind some of the proposed legislation.

Ms. Carroll: Actually, that was out of the scope of this particular committee, although our brief has certainly been endorsed by the AMO board. We had hoped, for instance, that our planning and housing committee would have addressed the bill as well. We got into our convention and, with the concern for time and what not, it unfortunately did not look at it. However, in the brief review we gave it in that area it appears that we have concerns in that area as well.

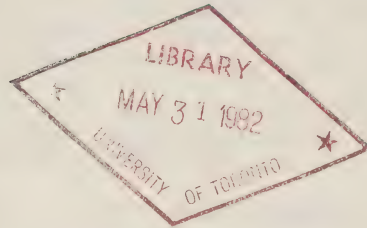
Mr. Chairman: Thank you, Marjorie, and the other members of the AMO committee for appearing today.

The committee recessed at 12:45 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

THE HUMAN RIGHTS CODE

TUESDAY, SEPTEMBER 8, 1981

Afternoon sitting

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Kennedy, R. D. (Mississauga South PC) for Mr. Lane

Clerk: Richardson, A.

From the Ministry of Labour:

Brandt, A. S., Parliamentary Assistant

Witnesses:

From the City of Toronto:

Eggleton, A., Mayor
Bruce, Ms. M., Management Services Department
Cohen, Ms. J., Management Services Department

Foster, R.B., Canadian Mental Health Association

From the Association of Large School Boards in Ontario:

Lawless, D., Executive Director
Riehm, Ms. E., Trustee, Halton Board of Education
Stewart, B., Counsel

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday, September 8, 1981

The committee resumed at 2:08 p.m. in room No. 151.

THE HUMAN RIGHTS CODE
(continued)

Resuming consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario.

Mr. Chairman: The first group with us today is the city of Toronto, and we have His Worship Mayor Art Eggleton. Perhaps, Your Worship, you could introduce those whom you have with you for Hansard and then commence?

Mr. Eggleton: With pleasure. I have Mary Bruce on my right and Joanne Cohen on my left. They are from the equal opportunity program operated by the management services department of the city of Toronto.

Thank you very much for the opportunity of allowing us to appear. First of all, I want to compliment the provincial government on its fine work in drafting an act to revise and extend protection of human rights in Ontario. The city of Toronto welcomes the improvements offered by Bill 7. The changes I am recommending today are intended to clarify or expand the new areas, activities and groups governed by the code or to strengthen the code's enforcement.

The city's brief reflects the ideas of a wide range of contributors. It was approved by city council and approved by our executive committee, and many of the ideas were contributed by the mayor's committee on community and race relations, which is a task force that was set up earlier this year by city council to advise me and the council on matters such as this. City administrators, particularly those civil servants working in our equal opportunity program, as are the two ladies who are with me, offered their expertise. At various stages, citizen advocacy groups voiced their concerns about the proposed human rights bill to city politicians, and we chose to support some of their ideas. I think many of the groups that have been here have also been before us. I hope that our contribution will encourage a just and progressive outlook on human rights in this province.

There were three main concerns that the mayor's committee on community and race relations viewed as being the matters of primary importance in ensuring that this human rights legislation provides equality for various groups. These issues are: one, contract compliance; two, reasonable accommodation; and, three, sexual orientation. Let me deal with the last item first.

While protection has been legislated for other groups through prohibitions on discrimination on the basis of race or sex, protection against discrimination on the basis of sexual orientation is admitted in Bill 7. City council feels that a human rights bill should provide this protection.

The city of Toronto passed a resolution about civil rights, of sexual orientation and city employment, on September 10, 1973. The policy reads quite simply that "Employees of the city of Toronto are to be in no way discriminated against with regard to hiring, assignments, promotion or dismissal on the basis of sexual orientation. Sexual orientation is understood to include heterosexuality, homosexuality and bisexuality." The freedom from discrimination that the city offers its own job applicants and employees should be shared, we feel, throughout the province.

The human rights bill for this province should provide for contract compliance. In this area we support the recommendations of the civil liberties association: "As a condition of obtaining government contracts, private sector employers must undertake a number of specific good-faith measures which are designed to broaden the participation of disadvantaged people in their business operations"--in effect, affirmative action-type programs.

The Canadian Civil Liberties Association also says that the Ontario Human Rights Commission should be required to promote good-faith measures in the provincial and municipal public service. That includes the city of Toronto, and we agree to abide by the commission's recommendation if its members decide to conduct a periodic investigation and review of our departments with respect to this matter of contract compliance.

Our third major area of concern is the provisions for reasonable accommodation. This bill does not define as an act of discrimination the refusal or unwillingness of an employer, service provider or landlord to make reasonable accommodation--that is, low-cost modifications--to meet a disabled or elderly applicant's condition. Unless the bill is altered, reasonable accommodation will be ordered only when discrimination is proved on some other ground. We recommend that the bill make explicit that it is an act of discrimination to refuse reasonable accommodation. There seems to be a great deal of experience on the question of reasonable accommodation and its enforcement in the United States.

While I hope that this change will result in advantages for the handicapped and the elderly, certainly they are not the only groups who stand to benefit. Instances have been cited in legislation of women being denied the right to apply for jobs because exposure to the employer's production methods could harm their ability to bear children. We feel that this is an unacceptable form of discrimination. Employers should consider whether reasonably priced alterations could be made to ensure the safety of production methods to both sexes before they restrict hiring.

There is one fairly new type of employment program in which the city has a particular interest, and that is the equal opportunity program. It is what Bill 7 refers to as a special program to relieve hardship or economic disadvantage, or to assist disadvantaged persons or groups to achieve equal opportunity. The city has a program of its own, which advocates within the civic service that barriers be removed to the training and advancement

of disadvantaged groups. Special programs do not mean that unqualified persons must be hired. Special programs are designed to raise a candidate's qualifications to a level where he can compete to obtain employment without regard to hardship which the group has inherited.

The human rights bill should be more explicit in allowing a board of inquiry to order special programs to relieve disadvantages of historical origin. The board of inquiry can already order remedies for other types of human rights infringements, and we think this additional area is reasonable. This reform would place relief of disadvantages that are historically based on the same footing. It would provide a concrete incentive to employers to provide special or equal opportunity programs voluntarily.

There are several other recommendations in our brief concerning implementation and monitoring of special programs. In the interest of brevity, I will point out one other because it is of particular importance. I feel that all special programs for the private sector should be consolidated under one administrative body so that a single employer does not have to deal with separate provincial agencies in order to implement special programs for women in one case, visible minorities in another case and the disabled in still a third.

The city employs more than 5,800 people in its own civic work force. We are, of course, concerned with general employment practices. It is my desire to see workers in this province receive equal access to all facets of employment, including not only hiring but also matters such as training, promotion and transfer. The detailed employment practices enumerated in section 4(1) of the existing human rights bill should be reinserted in the proposed section of this same number.

This portion of the old bill provided helpful guidelines for employers. The city of Toronto supports the longstanding request of the Canadian Civil Liberties Association that the practices of employment agencies be monitored. The general principle embodied in this proposal is that the commission consider its function be wider than simply to respond to complaints. I think that requires some very specific investigation and monitoring of employment agencies, not just as it operates now on complaints.

The human rights commission should be given adequate funds to carry out appropriate monitoring of employment conditions and practices to conduct effective research about the extent of code violations and discriminatory social practices and to engage in planning with business, government and community organizations to facilitate compliance with the code.

Through the process of collective bargaining, the city has arrived at a policy concerning sexual harassment, which we define as any sexual advance that threatens a worker's job or wellbeing. Persistence, which is at present in the code, should not be necessary for an act to constitute sexual harassment. The results of one serious incident of sexual harassment may cause employment

problems or mental anguish. Every worker should be protected from sexual advances which the perpetrator ought to know are unwelcome. I think the word "persistence" should be deleted from the section on sexual harassment, but if the province feels that it should not make this change, then at least the work should be defined.

Bill 7 refers only to sexual advances or solicitations by persons in authority. This should be extended, we submit, to include peers. The criteria for judging harmfulness should be the nature of the acts and not the status of the person doing it.

Another human rights issue surrounding the process of employment arose while the city's management services department was considering the recruitment of firefighters. That department contends that it should be entitled to state and advertise certain bona fide occupational requirements, such as height and weight, approved by the human rights commission, while still treating applicants fairly in adhering to our recommendations on reasonable accommodation.

The criteria for bona fide occupational requirements should be restrictively interpreted, we would suggest, based on a moral group of qualifications such as authenticity, security and public decency. The myth must not be perpetuated among employers that only certain types of work are suitable for certain persons such as a stereotype class. However, employers should be able to advertise certain bona fide occupational requirements.

This is how I propose that the competing concerns in this area can be reconciled. The code should compel employers to seek validation from the commission of the occupational requirements they are demanding. If these requirements are based on criteria only tangential to direct ability to perform the job, it should be the commission's duty to ensure that the notion of bona fide occupational qualification is narrowly construed.

If it comes to the commission's attention that an employer is not complying with the validation process, it should file a complaint. This issue arose in relation to the recruitment of firefighters. Because applicants are so numerous, given the powers we have suggested, the commission might approve certain bona fide requirements proposed by the city and applicants could be alerted to these when we advertise for the positions.

2:20 p.m.

There were certain omissions in areas of coverage of Bill 7 that members of city council felt should be rectified, or that were pointed out to us in dissertations by community groups. We found, for example, shortcomings in the section on search warrants because it allows warrantless searches of places that are not actually being used as dwellings. That can be interpreted as covering primarily businesses. To search a dwelling, a warrant is required. The city contends that for any search a person investigating a complaint under the Human Rights Code should be required to obtain a search warrant.

All people should be offered the same protection of privacy and freedom from harassment. The city of Toronto suggests that a more responsible balance could be achieved between freedom of expression and the right of individuals to freedom of abuse from hate literature. This might be achieved by strengthening the section of the code which deals with dissemination of discriminatory material.

In addition to the areas now covered in this section, the code should deal with the likely effect of hate literature on a person or group. It should prohibit the dissemination of material which has a tendency to expose a person or a group to ridicule, contempt or hatred. I recommend that the wording of the section on hate literature be strengthened so that it is similar to the sections of the Manitoba and Saskatchewan Human Rights Codes, attached to the end of our written submission.

As I began by mentioning a particular group in need of greater protection, so I will end. In Bill 7, age as a basis for discrimination is defined as being "18 years or more and less than 65 years." By maintaining the upper age limit for employment situations, we allow elderly people to receive certain benefits they have come to expect following retirement. To achieve this end, it should not be necessary to sacrifice the other rights of elderly people. They should not face discrimination in enjoyment of services, goods and facilities, housing or occupancy of accommodation.

How the human rights commission operates is, of course, a matter of concern to me. Enforcing human rights policies should not be one of many responsibilities, we feel, of the Ministry of Labour. The human rights commission, we feel, should be an autonomous agency, independent of the Ministry of Labour and of any other government ministry.

Now, Mr. Chairman, with the exception of the last matter, I have dealt only with the major substantive issues. There are many other matters in our brief of a procedural or structural nature. I have taken this approach in order to confine our presentation to a reasonable length of time and what we consider to be the major matters. However, my colleagues and I are willing to answer any questions that you may have.

Mr. Chairman: Thank you very much, Mr. Eggleton. Are there questions from members of the committee? While you are looking, maybe I could ask a question just for clarification. In the last part, you said that for seniors--and we have had several others interpret this--that the code does not apply to them when they are over 65. Yet I think it is my understanding that that is just for discrimination on the basis of age. Age is one of the bases of discrimination, and it is defined as 18 and 65, but the code applies to them in all other cases. Mr. Brandt, is that correct?

Mr. Brandt: That is correct.

Mr. Chairman: That is how I think we are interpreting it. If it is not that way, it concerns me that a number of groups are interpreting it to mean that it does not apply at all.

Mr. Eggleton: That certainly is what we want to be sure of. We were uncertain about that. Certainly there is a mandatory retirement provision for many people at age 65, but there are many other rights that they should continue to enjoy even beyond age 65.

I might add there is also some concern at the other end, in terms of 18. There are many young people out in the world by themselves who are seeking employment at 16 or 17. Perhaps some examination should be made of extending this to protect them as well from any discriminatory acts.

Mr. Chairman: There are two aspects to it. One is to permit discrimination on the basis of age, but the other part of it is that certainly everybody is covered by all the other parts of the code regardless of age. That is the minister's interpretation. I think we are going under that assumption.

Interjection: My colleagues aren't sure of that.

Ms. Bruce: We question that, and would like to be assured that it does apply.

Mr. Chairman: I took it on myself there because nobody was quick to assign myself a question.

Mr. Kennedy: Does the city have mandatory retirement of any employees prior to 65 years, such as fire, police services in the city of Toronto?

Mr. Eggleton: Only in the case of disability in the case of firefighters, for example. Sixty-five is the general retirement age.

Mr. Kennedy: It is 60 for firefighters?

Ms. Bruce: It's lower.

Mr. Kennedy: But for everyone else it is 65?

Mr. Eggleton: For everyone else it's 65. Yes.

Mr. J. M. Johnson: Mayor Eggleton, does section 12 of page 12 pertain to search warrants?

Mr. Eggleton: Yes.

Mr. J. M. Johnson: Your recommendation is that the human rights commission people should have the search warrant?

Mr. Eggleton: Yes.

Mr. J. M. Johnson: It has been mentioned on numerous occasions that this would impede the investigative ability of the commission, that in many instances they can't obtain enough evidence to convince the justices of the peace that they do need a search warrant.

Mr. Eggleton: We are concerned about that. There should be sufficient justification as is required now with respect to residential dwellings. We are certainly concerned about an open-ended situation where they can go in without a search warrant. We have to be very patient with that.

Mr. J. M. Johnson: You appear to be very pro-Bill 7, so I would assume that you had considered this aspect and you are not concerned that the lack of a search warrant would create any problem.

Mr. Eggleton: We are concerned about the lack of a search warrant. We found it rather surprising that there wasn't a provision for a search warrant in these cases, and that's why we suggested that it should be amended to require one.

Mr. J. M. Johnson: But in the present legislation they can search without a warrant.

Mr. Eggleton: Yes, so I understand. We were frankly at a loss to understand why that existed. We thought it was a pretty fundamental matter that a search warrant should be required as it is required in connection with a residential dwelling.

Mr. J. M. Johnson: I happen to agree with you. But what I am trying to get at is some sort of view. You put a fair amount of research into preparing this information and you would not be the least concerned that Bill 7 could carry on and achieve its purpose without having this section pertaining to search without a warrant.

Mr. Eggleton: I think the section that says that you can search without a warrant should be removed. That's what we are saying.

Mr. J. M. Johnson: Thank you.

Mr. Eakins: Your Worship, you mention here that you feel the scope of special interest groups is too wide and perhaps should be narrowed. I am not familiar with the terms of the acts you have outlined here. Would that include fraternal organizations or service clubs?

Mr. Eggleton: Could you tell me where you are referring to?

Mr. Eakins: Page 14 at the top of the page. It says, "We feel the scope of special interest groups is too wide and should be narrowed to include only groups protected...the BNA or Education Act..." I am just wondering if that includes fraternal organizations such as the Masonic Lodge or the Kinsmen Clubs, this type of association.

Ms. Cohen: I think the only sorts of restrictions that this section allows are restrictions according to religion, language or education, and any group that attempted to restrict itself on other grounds, we think, should not be allowed to have that sort of restriction.

Mr. Eakins: You are saying then that the Kiwanis Club and the Kinsmen Club, for instance, should not be strictly male service clubs, such as they are. The Kinsmen have Kinettes, the Kiwanis have ladies' organizations and the Rotary Club have the Rotariennes. You're saying that the Rotary Club, the Kiwanis, the Kinsmen, et cetera shouldn't exist.

Ms. Cohen: You have just told me that these clubs have women's organizations.

Mr. Eakins: Not in their own clubs. They have a wing.

Ms. Cohen: Well, a wing might be--

Mr. Eakins: How about the Masonic Lodge? I was wondering if that's what you mean.

Mr. Eggleton: No, I don't think we were suggesting that those organizations should not exist.

Mr. Eakins: Not that they should not exist, but that they should be open to--

Mr. Eggleton: Well, they should open their doors to women, but they do, as you pointed out. They do have auxiliary wings in many cases.

Mr. Eakins: They have their own separate organizations.

2:30 p.m.

Mr. Eggleton: That is an affiliate organization.

Mr. Eakins: It's an affiliate. Right.

You mention in recommendation two the scope of special interest groups and the terms of size of membership in sports organizations. What age group are you suggesting? Younger people or all sorts of people?

Mr. Eggleton: I think we are talking about younger people primarily. That's part of the problem.

Mr. Eakins: I just wondered if we might get some help for the Argonauts.

Mr. Eggleton: I don't think we foresaw that kind of change at that level. But they may well be helped by a few women on their squad.

Mr. O'Neil: I wonder at your suggestion that the Ontario Human Rights Commission shouldn't come under the control of the Ministry of Labour. You are suggesting that there be an autonomous organization. Is that right?

Mr. Eggleton: Yes. It would report to the Legislature, in effect. But rather than be an agency of one of the ministries, it should have a special focus and independence and autonomy.

Mr. O'Neil: The only question--and I wonder whether you considered this when you made that suggestion--is what would happen if these types of rules, some of these things that we find in Bill 7, were brought in, whether they could go in and search and seize and things like that. We might not have the same control we have here where we can demand that this legislation come before our committee so we can make the changes that should be made. I am wondering if your suggestion might not be a little dangerous, that they not come under one of the ministries where this type of thing could be examined and changed around.

Mr. Eggleton: I don't know why they couldn't report to the Legislature and have things examined by a committee. I am just saying that it should be that nature of organization as opposed to one of a number of agencies in a single ministry. There should be public accountability for their operations.

Mr. O'Neil: Had you thought when you made that suggestion of the type of accountability there should be?

Mr. Eggleton: Not the specifics, but it certainly should have responsibility to the Legislature. Its report should be examined and its operations should be examined by a committee. But, as I say, we felt it should not be just one of the numerous agencies of a ministry.

Mr. Havrot: Mayor Eggleton, on page 13 of your brief, recommendation one, you say, "Sexual orientation and political belief should be added to the prohibited grounds for discrimination in Bill 7." What was your opinion of the raids by the Toronto police force on the gay community in February of this year?

Mr. Eggleton: Certainly I don't look upon them as being a question of harassment against people on the basis of sexual orientation. It was a question of carrying out the responsibilities as they felt under the Criminal Code. They felt there was reason to raid those particular premises and lay the charges.

What we are saying here is that sexual orientation really is a private matter and people should not be discriminated against on the basis of their sexual orientation. They should not be allowed, I should also add, to thrust or force their sexual orientation or inclination on other people. But in terms of carrying out a job they should not be discriminated against. It is a matter of their private lives.

Mr. Havrot: You feel that the raids were justified then at that time in February this year?

Mr. Eggleton: The courts will certainly determine that when the charges come before the courts.

Mr. Eaton: We were told this morning it was harassment.

Mr. Havrot: Yes. This is what we were told in the brief that was presented earlier this morning. Thank you.

Mr. Riddell: Now that Ed has opened up the sexual orientation aspect of this thing, let me continue. If you were the director of a board of education and you received two applications, one from a heterosexual and one from a homosexual, and they both appeared to have the same qualifications, which one would you be apt to hire if you happened to have children going to that school?

Mr. Eggleton: As I say, I think a person should not be trying to force or promote his sexual orientation, certainly not teachers in our school system. I would be very concerned about that. But if they keep it as part of their private lives, then I don't think that's going to be a difficulty. I don't think a person should be discriminated against if they say, "That is part of my private life," but it is something that maybe the principal or whoever is doing the hiring happens to find out. I think that as long as they keep it a part of their private life, it should not be held against them. But we certainly do not want to be in a position where people wonder whether you are heterosexual or homosexual and are promoting your lifestyle in our school system, or anywhere else. That is not part of the job.

Mr. Riddell: Believing in the democratic system, as I am sure you do, and you are unable to make that decision and you give it to the people to decide, in other words, you give them a chance to vote on this and the people vote by a large majority to have the heterosexual applicant hired, would you be guided by that decision?

Mr. Eggleton: There may be many other cases where popular opinion may suggest that we should discriminate against certain people. The purpose of the Human Rights Code is to protect people from discrimination. If in a case like this a person was keeping it a part of their private life, then I do not know how anybody would necessarily know. But if it happened to come to light, I do not think that person should be discriminated against. If they are planning on promoting their lifestyle in the schools, then I think that is a different matter altogether. I do not think they should be allowed to do that.

Mr. Riddell: You keep coming back to that one point, but the point I am trying to make is that by giving minority rights such as this, are you taking away majority rights?

Mr. Eggleton: No. I think we are saying that a person's sexuality is his private business as long as he is not foisting or promoting his lifestyle upon other people. That is where I think the clause on discrimination should be inserted with respect to sexual orientation, on that basis.

Mr. Riddell: You have no hesitation whatsoever in having your son go out on a hike maybe as a Boy Scout, and the leader happens to be a homosexual. It would never cross your mind that there is anything wrong with this.

Mr. Eggleton: If that particular person was promoting the fact that he was a homosexual, and if I was led to believe he was going to promote his lifestyle, then, yes, I would have a lot

of concerns. But if that person was just going about his job of how to tie knots, build fires and things like that, then I do not think that would be a problem at all. We may have had many cases in our lives where our children have been taught by such people and we did not even know they were homosexual. I think we would be comfortable with that as long as we knew they were not trying to promote their lifestyle.

Mr. Riddell: This is getting away from sexual orientation now, but suppose you were a businessman running a small business and with high interest rates, you are really on the brink of going under, or over. Believe me, I am getting lots of comments from businessmen saying, "Where have are our rights gone to. We cannot hire whom we like. We cannot fire whom we like." Here is the businessman who wants a salesman or saleswoman and a handicapped person applies for it.

Let me use as an example a person who is a wheelchair victim. He has all the qualities of being able to sell the goods, but it means that this businessman is going to have to put ramps in his store. Maybe his store is on three tiers and he is going to have to put ramps in his store. The businessmen are saying to me, "Do you mean to say that somebody can come along and tell me that I am going to have to go to the cost of putting in ramps so I can have a wheelchair salesperson perform his or her services?"

Mr. Eggleton: If it is a low-cost modification, if it is reasonable to do it without creating any great financial hardship, then I do not see why it should not be done. But if it is going to cost him an excessive amount of money, then I can understand that and I do not think he will be forced to do that. That is why I refer to that as reasonable accommodation. It is a question of defining what is reasonable. I do not think they should be made to do unreasonable things. I quite agree with you.

Ms. Bruce: I think probably, though, if they did go to that extra cost and they found that their clientele went up too, they might make more profit because all the disabled people would probably come to his store. It would probably be the only one they could get into.

Mr. Riddell: If I had the time I would like to read some letters. I think you people got a copy of a letter from one of my businessmen that put it right on the line. These are things we have to consider. It is pretty hard when you have all your money on the table. You are the guy who paid for that business. It is pretty hard to accept someone coming along and saying, "Look, you have to do this, you can no longer hire who you want, you can no longer fire that person." It is pretty tough for some of these people who have a lot of money invested to accept some of this.

2:40 p.m.

Mr. Eggleton: I do not think we are asking anybody to have to go to any unreasonable lengths.

Mr. Riddell: Yes, but you are going to find that a lot of these businessmen are put before the human rights commission.

That is the only thing. It is going to be very easy now to take an employer before the human rights commission. How many of them are going to want to stand that kind of time and harassment and what have you?

Mr. Eggleton: I think most reasonable people will not have a problem with it.

Mr. Chairman: I think there is the answer to your question. It may not be to your complete satisfaction but I think he is stating--

Mr. Riddell: It is just that I see two sides to it. I am all in favour of human rights, but there is the other side to it too.

Mr. R. F. Johnston: The matter of housing for children and adults has been raised here before and I am glad to see it has been included by the city. You say in your comments on page six that you want to make sure they are explicitly protected, the rights of children, rather than being diminished as they are specifically in the act. Yet all you ask is that the section be deleted, rather than putting a statement which assures that does not occur. Can you explain how you came to the decision to state that?

Ms. Cohen: I think as soon as that part was deleted in that section, section 2 would then apply. That does specifically protect the rights of children.

Mr. R. F. Johnston: Is there any reason, in dealing with the age side of things, that you did not deal with the other end, 18? We have had a number of groups come to us about 16-year-olds to 18-year-olds who are without rights and often are living alone in our society.

Mr. Eggleton: I mentioned that earlier when we talked about age. I said that consideration should be given to 16-year-olds and 17-year-olds because they are, in many cases, out on their own, suffer from discrimination and require protection. It was not something that was brought before council, but I mentioned it a little bit earlier as something that I hoped would be given consideration.

Mr. R. F. Johnston: I had a little difficulty with the sexual orientation side of things coming out from a slightly different angle than some of the comments heard to date. The city's position, as I read it, is one of saying that sexual orientation as well as political beliefs should be added as one of the prohibited grounds. Then I hear you say that a teacher who is homosexual, one who the principal knows about but nobody else knows about, should not be dealt with because that is a private matter. But if that person was to state, "I am a homosexual" as I would state, "I am heterosexual," and display that by coming into a school dance with my wife, which displays my preference, I am not going to be dealt with severely.

But you are saying that a teacher--at least, as I heard what you were saying--who is explicitly homosexual and states that he is explicitly homosexual maybe should be treated differently to someone who is explicitly heterosexual. Is that what I was to understand by what you were saying?

Mr. Eggleton: No. If he wishes to state to his prospective employer that he is homosexual, I do not see a difficulty with that. But if he goes into the classroom and starts saying that, the obvious question flows, well, what does that mean, what is it all about? When you get into the business of promoting your lifestyle, I think that is wrong.

Mr. Riddell: What if he comes to the dance with his boyfriend or she comes to a dance with a girlfriend? Is that promoting?

Mr. Eggleton: I don't know if there are too many circumstances where they would do that, but I do not think they should be in the business of promoting their lifestyle.

Mr. R. F. Johnston: I am just finding a little difficulty. We are talking about basic rights here, it strikes me, and we are saying that--

Mr. Eggleton: What I am saying is that if a person comes in and if the prospective employer, principal or whoever it might be, has discovered or has heard from that person that he is homosexual that should then preclude him from employment on those grounds; I'm saying that should not happen and the Human Rights Code should cover that. But if that person is intent upon promoting his lifestyle, I think that is beyond the scope of what his job is all about and he should not be doing that.

Mr. R. F. Johnston: I guess I just have some real difficulties with where we are going to draw the lines.

Mr. Eggleton: Well, it's a difficulty. I agree with you.

Mr. R. F. Johnston: Either something is a right or it's not a right. I have real difficulty in deciding. If we are saying that there should be no discrimination because of race, we don't then start to make some ifs, ands or buts. If somebody gets up and says, "I am very proud to be black, and I want to talk about the way blacks have been suppressed in Canada over the last number of years, and I want to make that something I talk about in the classroom," we are not going to say that that person should be fired because he is expressing that point of view about his race.

Yet what we are saying here is that sexual orientation should be a right, and you are saying that if somebody says, "I am homosexual and I am proud of it; I am not ashamed of it," depending on how he does that, you are going to say it's all right that that person should not be in the school system. I have difficulty with being ambivalent about that. It seems to me that either you accept the right or you don't accept the right and you live with it. By God, we as a party learned to deal with that, I hope, in the last election--not to try to have it both ways.

Mr. Eggleton: I can't agree with that. I think a person is hired to teach math or history or is hired to mine ore or whatever. That is the job he is hired for; he is not hired to promote his sexual orientation. That should not become something that is allowable. The person should keep that as his own private matter. It's the same with a heterosexual. He should not be going into the classroom and promoting his lifestyle if he is hired to teach math or history or something else. But he should not be discriminated against or prevented from getting the job because he is either heterosexual or homosexual.

Mr. Kennedy: I have a question on page 11, number 11: bona fide occupational qualifications.

Mr. Eggleton: Page 11?

Mr. Kennedy: Page 11, yes. Perhaps you could just take the committee through that and what you have in mind. As I understand this, there could be a problem by an employer in identifying--classifying, if you like--whether an applicant would be qualified to do the job or be eligible for the position. In recommendation one you are suggesting, "compel employers to seek validation from the commission of the occupational requirements they are demanding," and so on.

Could you take us through a scenario there? Perhaps if you are advertising the position you don't know what the physical conditions of the applicant are, and this would certainly, to me, seem to be a time problem at the least as well as a problem of sorting out. When you take this along with recommendation two, where you suggest that the commission make this determination for the potential employer and then the employer can advertise what these restrictions are, is that along the lines of what you are saying there?

Mr. Eggleton: Yes. The example I used earlier was our fire department, where there are some physical requirements. There is a height requirement and there are other requirements to become a firefighter. To ensure that these requirements are reasonable, we are suggesting that the human rights commission could establish if they are reasonable, bona fide requirements or qualifications for the job, and then they could be advertised as such so that people who are applying would know what the requirements are.

Mr. Kennedy: I related that to a private industry or small business that was advertising for employees and might run into the same thing. They would certainly be bogged down in sorting out applications and in limiting the qualifications that are placed in the ad. You are saying to go to the commission first.

Mr. Eggleton: Yes. I think to ensure that some of those restrictions, which would not normally be allowed, are reasonable, bona fide qualifications they should monitor that.

Ms. Cohen: We're not talking about ability to do the job; we're not talking about those core attributes that somebody might need to mine ore, that you need to be of a certain strength. The employer can judge the abilities of the applicants.

What we are talking about is these restrictions that are sort of side restrictions, that somebody has to be of a certain sex or a certain height or a certain weight. These are the things that have usually fallen under the section of bona fide applicational qualifications. In the past we think they have been far too broad. There have been too many of these. It should be restrictively interpreted. The commission should be the body to interpret it and, once an employer has approval from the commission, then he should be able to advertise those restrictions.

Mr. Kennedy: Just clarification and a definition prior to his advertisement going in.

Ms. Cohen: That's right.

Mr. Kennedy: That would work in the situations as it's in line with your thinking, but it wouldn't with, as I say, a small factory, or a large factory for that matter, that puts in a general ad for employees wanted. Then they turn up on the doorstep for interviews and they have pinned you into this judgement call, or perhaps reference to the commission, who must make a judgement.

Ms. Bruce: I don't think you would find that that's a problem with a small industry unless it is a special occupation such as firefighter or a special group needed, say, in a psychiatric hospital. It's usually something that's known in advance. In the case of the firefighters we advertise once a year, and it's not ongoing. Most of the things we deal with in those occupational qualifications deal with places like firefighters, police officers, that kind of occupation.

Mr. Kennedy: It is a good point if it could be done in advance and you could make it work.

Ms. Bruce: Once you have the clarification that's it for good, it's just the one time and then you are monitored on it.

Ms. Copps: Three questions. First of all, you touch a little bit on the issue of accommodation, et cetera, that should be available for people 65 or over, or over 65. Do you have any feelings on the possibility that the age 65 should be lifted or abolished in terms of employment?

Mr. Eggleton: We have not as a council discussed that. I would personally like to see the opportunity for people who can still be employed productively, who can still make a contribution, to be able to be employed beyond 65, at least in part-time jobs. We have run into some cases where we have wanted to retain some employees beyond 65, maybe on a contract basis, a part-time basis, or whatever, because they had a particular expertise that they could continue to provide and they were in good health. So we are in a little bit of a quandary because of our mandatory retirement at age 65. I do note that I think at least one province has removed that restriction. It is something that we are giving a lot of thought to. We haven't taken a formal position on it, but we certainly are giving the matter a lot of consideration at this point.

Ms. Copps: Secondly, with respect to adults-only apartment buildings and the comments that you made in your brief, I understand from one of the previous guests that the city of Toronto had previously passed a bylaw that dealt with the issue. Could you give us a bit of background on that? I understand that it wasn't that effective, and maybe you could tell us what happened?

Mr. Eggleton: Yes. That's why we are asking for it in the code because it hasn't been very effective and it has not been very enforceable. It was passed in 1976, and essentially it says, "Occupancy of housing accommodation by adults and children is hereby deemed appropriate thereto where (1) such housing accommodation was on the first day of October 1976"--which I think was about the time that we passed this bylaw--"shared by at least one adult and one or more children; where such housing accommodation was not on the first day of October shared by at least one adult and one or more children, but such housing accommodation was part of a building which also contained other housing accommodation which on the first day of October 1976 was shared by at least one adult and one or more children..."

What that all means is that many of the apartment buildings which already had been established as adult only were, in effect, people who were of an older age; they were almost senior citizen buildings. And they argued that they would like to be left in peace and quiet, and we said "Well, yes, senior citizen buildings that are operated by the municipality should have that opportunity and perhaps so should some others which are neo senior citizen buildings," if I can call them that. So we put that particular date in, and we said anything after this date should have both, but that has really become very difficult to enforce, difficult to determine whether they had children in the building or not prior to October 1, 1976. In any event, we think it is really a matter that should be not just the city of Toronto, but as a matter of human rights and should be province-wide.

Ms. Copps: I really am sorry that we are focusing in on this because I think it takes away from the debate of the whole sexual orientation issue, but the issue of the bath house raids was raised and had been raised earlier today. You said you felt the raids were carried out within the context of the Criminal Code and to determine whether there were illegal acts being committed, et cetera, I wonder if you might comment on the timing of the raids and the deployment of numbers which in the report we have seen in the paper was almost parallel to the number of people deployed in the War Measures Act. I wonder in that context if you stick by your position that it was due process of law being carried out?

Mr. Eggleton: I had not anticipated getting into the question of the bath house raids and the timing and the number of people used. The whole question of sexual orientation with respect to the Human Rights Code is something that in terms of the city of Toronto position far predates any bath house raids, going back, as I mentioned earlier, to 1973, when we indicated it should be a policy of city council that there not be discrimination on that basis with respect to our own employment practices, and we are

saying that kind of provision should be extended throughout the province.

Going back to the bath house raids for a moment, I have had several reports from the police as to why they required that number of people and the purpose of the timing. A lot of the timing aspect of it will come out in the matters being dealt with by the courts, as to the reason they went in, the timing, the number of men. There were a great number of men used for processing and many other different responsibilities, and I would suggest if you wanted to get a copy of the report from the police chief with respect to that, you can then make your determination whether you think it was justified to use that many people. The main area we are dealing with here today is whether it should be in the Human Rights Code, and I think it should be.

Ms. Copps: I didn't ask the question to divert the attention from the specific issue of sexual orientation because I think that can tend to be used as a red herring by either side. The reason I was specifically interested in your comments is because it had been raised earlier on today and there were intimations that if the position you took was one in that there was no discrimination, that perhaps the issue of sexual orientation is not an issue. That has been the position by some people in this committee, that it is not an issue, and therefore, why should we be including it in legislation, and I think certain proponents of the inclusion of sexual orientation have used that particular raid as a visible example of a situation where justice was seen to be applied in an unequal way, and in that context would be living proof, as it were, of the kind of situation that can exist across the province for people of homosexual orientation.

Mr. Eggleton: I understand what you are saying. I have not used that as an example. As I say, many of the cases are still before the courts, and I don't think I should comment on them. I think in the fullness of time when the evidence comes up in court, people will be in a better position to make their judgements with respect to that; but the matter of sexual orientation and nondiscrimination on that basis is something that, as I say, for the city of Toronto goes back to 1973 when we suggested that as a policy and adopted it as a policy, and we are suggesting it be extended throughout the province.

Mr. Havrot: Just a point of clarification: Page six, employment practices, recommendation two, you say in here that the practices of employment agencies be monitored. Would that include the Unemployment Insurance Commission, run by the federal government? There is a possibility of discrimination there, too, discriminatory practices.

Mr. Eggleton: If the human rights commission feels that it requires investigation, I don't know about that.

Mr. Havrot: But are you referring strictly to private agencies?

Mr. Eggleton: Yes. The problem has arisen with respect to people requesting that only applicants who are not of a certain

colour or a certain sex be sent to them. Employment agencies, quite frequently, so the evidence indicates, have been willing to comply with that. That is the situation.

3 p.m.

Mr. Havrot: Quite obviously, that could apply also to the Unemployment Insurance Commission, at the request of an employer, stating the type of person he wants to hire.

Mr. Eggleton: It depends. Are we getting into the question of bona fide qualifications? We talked about that. Or are we just getting into the question of some organization not wanting somebody because of their colour, or because of their sexual orientation or whatever? Those clearly discriminatory practices are something that should be investigated; we are saying. Rather than just waiting on complaints, there is evidence to indicate that in fact it is a fairly serious problem.

Mr. Havrot: Would you not consider the inclusion of the Unemployment Insurance Commission--the Canada Manpower centre?

Mr. Eggleton: I should hope that a government agency would not be practising discrimination, but indeed if the human rights commission feels it needs looking into, it--

Mr. Eaton: The agency may well be.

Mr. Eggleton: It may well be.

Mr. Chairman: Thank you.

Mr. Eaton: A question in regard to number 10 on insurance plans: I find that your two recommendations seem to be in conflict. First, you are saying you disagree with having discrimination because of sex, marital status, age, and saying that should be changed. Then you say these restrictions are to be group-based; this should be pooled for an entire group.

Mr. Eggleton: Where is this?

Mr. Eaton: Ten, your recommendations on insurance plans.

Ms. Cohen: I think this was something that Frank Drea originally proposed, and then dropped. I think it was along these lines he was suggesting--

Mr. Eaton: No particular reason for doing it other than that Frank said it?

Ms. Cohen: No, we agree with him. That is why we put it in.

Mr. Eggleton: I would like to point out where we agree with the minister.

Mr. Eaton: You are in a position there where it says "group-based"; that is exactly what it is now. The accident

records for 16, 17 and 18-year-olds show that they are high risks and they pay a little more. The next group, 20 to 25, will pay a little less because they are the next lower rate group.

Ms. Cohen: That is right. If these restrictions that apply to a certain group have some basis, then they should be allowed. But there used to be restrictions or special rates, for example, for immigrants, let us say, in insurance, and these have been dropped. Now there are some sex-based restrictions that are not (inaudible) to justify.

Mr. Eaton: The only restriction from that angle would be that they come in as new drivers. As a new driver, it does not matter whether you are a new driver from Japan or a new driver from Ontario, you are going to pay the same rate. It would be because you are a new driver, not because you are an immigrant to the province.

Ms. Cohen: These no longer exist, but that used to be one of the bases. That was not the reason.

Mr. Eaton: No, I cannot buy that. In the insurance business if they made that kind of discrimination it was because they were new drivers, not because they came from other countries.

Mr. Eggleton: All we are saying is that it should not be on the basis of age, sex, marital status, or whatever. It rests on facts, on hard data, the particular group of people--

Mr. Eaton: But there are obvious reasons for doing that.

Mr. Eggleton: Sure, that is just the basis of--

Mr. Eaton: The basis is the record of their accidents show that there is the group--

Mr. Eggleton: We are not allowing an automatic situation to exist. If there are hard data to support a particular group paying a higher rate, that is fine.

Mr. Eaton: There is not much basis behind it. AMO made a presentation here this morning about a concern that if you got a complaint it might hold up some of the grants the municipality might receive for some time before they got their money. Have you considered that one at all?

Mr. Eggleton: With respect to this particular section?

Mr. Eaton: No, not that section, but with respect to the section--you did mention that you supported it--page five at the bottom, contract compliance. They indicated that if there was a job being done--their example was a road being built within the municipality--if there was a complaint against that contractor, it might hold up your grants for your road budget for some time before they got it sorted out.

Mr. Eggleton: This is a question. We in the city of Toronto before we award a contract look at the question of a fair

wage, to make sure that they are not necessarily a union employer but that they are providing a fair wage. We find we can do that all very quickly and it goes quite smoothly. This would be an additional examination to make sure that the employer has in fact something positive going. If he can demonstrate he has an affirmative action program going, then--

Mr. Eaton: That does not ensure that something might not happen on the job; for instance, he fires somebody on the job and immediately he complains to the human rights commission and they start an investigation--

Mr. Eggleton: But by that time he would have a contract.

Mr. Eaton: He has a contract with you so maybe it would be the government that would hold up any payments on that until the whole thing is sorted out. Would that create a problem for you?

Mr. Eggleton: It certainly would not hold up the awarding of the contract. The contract is awarded if he demonstrates that he--

Mr. Eaton: No, but he is holding up the money that you might be in receipt of from the government.

Mr. Eggleton: I do not know how that would work on a complaint basis further down the line, but certainly, in the beginning, if he shows that--we are not talking about very specific situations here with a specific employee, we are just saying he has to have some evidence that he has an affirmative action program, an equal opportunity kind of program, that he has given it some thought and that he is doing something about it in a general way.

Mr. Eaton: It not necessarily an affirmative action program; it is a question of some discrimination happening at the time.

Mr. Eggleton: I do not think that is exactly what was intended by contract and clients. As we point out here, it is a question of good faith measures. Affirmative action programs, or however you want to call it, is something we are asking them to demonstrate.

Mr. Eaton: But as part of the bill, that is one of the responsibilities and that is one of the things that could possibly happen.

Mr. Eggleton: I do not see it as something that would create big problems or concern.

Mr. Eaton: AMO expressed some concern about it.

Ms. Copps: Can you speak a little louder, sir? We cannot hear what is going on over here.

Mr. Eaton: If they quit talking over there beside you, maybe you could.

If you are not concerned about it that is fine.

Mr. Eggleton: No, I do not think that will be a problem.

Mr. Chairman: I think Mr. Brandt, too, explained today that was not the intent. If it is to be construed that way, it likely ought to be changed and will be.

Mr. Brandt: I have one question, Mr. Chairman, in connection with the comment made by the mayor earlier. You indicated, I believe, Art, some support for affirmative action programs. Has the city of Toronto implemented anything remotely resembling a quota system? Are you advocating that as a part of the affirmative action concept?

Mr. Eggleton: No. We have adopted affirmative action programs. We are in the process of devising even more. We have affirmative action programs with respect to women advancing in different positions in the civic service. We are also looking at that with respect to visible minorities, to have a better reflection of the society that we have today, to have equal opportunity for all people in the community.

We are devising affirmative action programs. We have had a number of them, as I say, for some time now, but we do not operate on a quota system. We do look and we monitor the situation in different departments. We encourage, we have dialogue with the department heads and representatives to make them aware of where they stand in relation to the overall civic service and our hope as an equal opportunity employer, but we have not specifically said we must have so many people, a visible minority and so on.

Mr. Eaton: Surely that in itself is discrimination.

Mr. Brandt: That is the problem. I wondered if you had moved in that direction because there have been some court cases, including one in California that you probably are aware of that had caused some deep thinking on this whole question. When you did indicate that you were in favour of affirmative action programs, I wondered to what point you had gone in trying to implement them.

Mr. Eggleton: That is the extent. We monitor it, we encourage, but we have not said you must. We of course want the best qualified person for each job. We want to make sure that everybody has the opportunity to get to the door. Whether they get into the door to a great extent has to do with their own qualifications for the job, but certainly they should have every opportunity.

Mr. Brandt: One other point I would like to clarify is in regard to your statement with respect to sexual harassment. It appears that you take some issue with the word "persistent." I think the ministry's position, as well as the implications in the bill, is if there is a male-female relationship in an office, in the context of the bill we are usually talking about a supervisor or someone in authority. It would be very difficult for a sexual harassment charge to stick if there was not a second or third

occasion of some kind of overt action on the part of one against the other.

3:10 p.m.

What you are suggesting is that is somewhat vague and perhaps this could be initiated on a first approach basis. We have some difficulty with that in the ministry, primarily because we feel that the normal kind of byplay that is associated with, let's say, a male-female relationship where someone may wish to ask someone else out or to make an approach to that person, can be looked upon as being sexual harassment when it is nothing more than a normal kind of contact. But if it is kept up or if it is persistent, two or more times, then it becomes persistent. Do you have any problem with that interpretation?

Mr. Eggleton: As I say, we are not concerned about somebody being asked out, but certainly sexual harassment, if it occurs, can sometimes in just one or two incidents be very devastating to the individual. So it is certainly our preference that it not have to be on a number of occasions that that person tolerate that situation. If you find that it has to be in there because the court requires that it be proved to have happened on more than one occasion, then at least define what it means. Does it mean one or two times, or how long can this go on?

It depends on the nature of it, just exactly how serious it is. Asking somebody out is nothing unless a person is persistent in it a great many times. But there can be some other acts that are extremely devastating on even one occasion.

Mr. Brandt: You use the expression "leering" as an example in your brief. A leer, I suppose, is in the eyes of the beholder. How would you know that that is a harassment situation? They are your words, not mine. I am just saying that your brief is rather vague in that context. As a male, you can look at a female, and maybe the female sees that as being leering while it may be nothing more than a look of admiration. There is a difference. Or vice versa.

Ms. Bruce: It is a question of whether you are looking at me in admiration eye to eye, or if you are spending the whole conversation looking at my breasts or another part of my body. We could play leering games. I can look at your body and you can look at mine, but leering is being interpreted by us as not having eye to eye contact in talking to each other.

Mr. Brandt: You notice I am looking directly at your eyes.

Ms. Bruce: Yes, I noticed that. I am doing it, too.

Mr. Brandt: I drop the question.

Mr. Chairman: Mr. Eggleton, thank you very much for being here today and bringing the views of the city of Toronto. We appreciate it very much.

Mr. Eggleton: Thank you very much.

Mr. Chairman: We are running a little bit behind. From the Canadian Mental Health Association, we have Mr. Foster. While the brief is being circulated, I would like to say that a paper from the Legislative Library Research was distributed on some of the points that were asked for this morning. That was done over the noon hour and has been circulated. Is there anybody who does not have that? Okay. Mr. Foster.

Mr. Foster: My name is Reg Foster. I am a staff member with Mental Health Ontario, the Ontario division of the Canadian Mental Health Association. The Canadian Mental Health Association is very pleased to be provided this opportunity to appear before the resources development committee to present our views on Bill 7, an Act to revise and extend Protection of Human Rights in Ontario. Our association is a voluntary, charitable organization with 37 branches in Ontario.

In addition to carrying on support and advocacy programs on behalf of the mentally ill in this province, our branches operate over 40 community mental health programs, funded under the adult community mental health program of the Ministry of Health. These programs include groups homes, social recreational centres, life skills programs and one to one counselling.

The primary focus of our remarks today will be as it is set out in section 9(b)(iv) of Bill 7, the inclusion of a person who "has or has had, or is believe to have or have had, a mental disorder" for protection under the Human Rights Code. Regarding the more general aspects of the bill, our association has been an active member of the Coalition on Human Rights for the Handicapped in Ontario, which appeared before this committee on June 9 of this year. We fully endorse their positions, and the coalition has endorsed the views we are presenting to you today.

We are in agreement with the definition of inclusion as it now exists in Bill 7. This position was unanimously passed at the June 1, 1980, meeting of the board of directors of the Canadian Mental Health Association, Ontario division. However, the forerunner of the Human Rights Code amendments, Bill 188, did not include protection for those currently experiencing a mental disorder, protection being limited to those who had had a mental disorder. Further, criticism of the current definition of inclusion has been voiced before this committee, so we would like to state several points in support of it.

First, the group of people who would receive protection from discrimination on this ground under the new bill may very well be the largest group included. Statistics for the most recent year available show that in 1979-80, admissions to Ontario's psychiatric facilities totalled 53,503. To this may be added those seeking psychiatric help from their general practitioner, private psychiatrist or psychologist, or residing in a facility such as a home for special care.

The committee for the International Year of Disabled Persons states that one person in six will experience some form of mental illness during their lifetime, or over 16 per cent of the population. This may be compared to the estimated 10 per cent who

are physically handicapped, or the one per cent to three per cent who are mentally retarded.

The social stigma attached to conditions of mental disorder is among the most severe in our culture. In a field where the most highly qualified professionals still do not agree on basic matters of cause, diagnosis or treatment, it is little wonder that, for the layman, it is an area surrounded by suspicion and prejudice. And if our prejudice is most irrational when it touches closest to home, it is mental illness which threatens our deepest vulnerability, for it respects no lines of race, age, sex or economic class.

The predicament of those who experience mental disorders must also be appreciated within the context of the current evolution of our mental health system. Since the mid-1960s, our government has pursued a policy of deinstitutionalization. Institutional spaces have dropped to a fraction of their former number, while new psychoactive drugs have shortened hospital stays. The sum result of this has been to place unprecedented number of people still in some stage of treatment in the community, where they must face the task of coping with the contingencies of everyday life and the prejudice and ignorance of those around them.

I would stress that our association favours community care for the mentally ill and actively advocates the creation of a community care system that would provide appropriate supports to people in the community. However, such an evolution in style of care makes the need for protection from discrimination greater than ever. The woman who is denied housing by a landlord because her social worker comes to visit her, is in need of protection; the young man seeking a job, who is turned down by an employer because he attends an outpatient clinic for review of his drug regimen, is in need of protection; and the senior citizen who is refused service in a store because he or she lives in a home for special care is in need of protection.

Finally, I would like to list for the committee the groups and organizations which have endorsed the wording of the inclusion that now exists in Bill 7. In seeking to expand the definition which appeared in Bill 188, we received the support of a broad spectrum of community, professional and self-help groups with specific experience in the psychiatric field for the definition of inclusion which now appears in Bill 7. Those groups are the Ontario Medical Association, Psychiatric Section; Ontario Psychiatric Association; Ontario Psychological Association; the Ontario Association of Professional Social Workers; On Our Own; Friends and Advocates; Friends of Schizophrenics; Spectrum; House Link Community Homes; Regeneration House; Salvation Army, Dufferin Residence; the Ontario Association for the Mentally Retarded; Ontario Association of Children's Mental Health Centres; the Ontario Hospital Association; and the Advocacy Resource Centre for the Handicapped.

Mr. Chairman: Thank you very much Mr. Foster. You have zeroed in on that part that you are obviously concerned with. Are there any questions of Mr. Foster concerning the position of the Canadian Mental Health Association?

3:20 p.m.

Mr. R. F. Johnston: It strikes me as interesting that you would come and make a presentation for something which is included in the act. Do you do this because of some nervousness that it might disappear and that the act may look more like Bill 188 after we are finished?

Mr. Foster: I guess I would refer you to the section where we mentioned the stigma and level of prejudice that we feel is a bit distinct. I think, from the other areas, other groups have been included. The International Year of Disabled Persons has done a lot to change people's attitudes about the physically handicapped, especially, but the problem of identifiability, and so on, I do not think has made as large an inroad into the general level of prejudice about people with that particular handicap. And there was specific comment in the press and so on about that particular type of inclusion. We wanted to reiterate our support.

Also, when we made the general presentation as part of the coalition, we were not able to state the groups that specifically supported our position when we went to seek support among the psychiatric community for that task.

Mr. Eaton: You are supporting something until you get something.

Mr. R. F. Johnston: And you are basically looking to find out what the committee's response is, I presume; to know if you can expect this to continue. From our side, yes, we agree with your position.

Mr. Foster: If the committee felt we should make some sort of indication, we just wanted to stress those points in favour of it and to let the committee know about the type of support we had received from the groups that are experienced in this area.

Mr. Kennedy: Mr. Chairman, perhaps this is for the parliamentary assistant, but with that section, we have the confidentiality of medical records. Do you see any problem in the application of this section vis-à-vis the confidentiality of health records, medical records? It seems to me you could get into this area. It would seem to me that it may be necessary to have some kind of documentation.

Mr. Brandt: It is a question I can look into. It has not come up.

Mr. Kennedy: I believe the applicant can waive his right to confidentiality, if I understand that medical terminology correctly. But I would be interested to know. I do not know whether you thought of it in that context or not.

Mr. Foster: It is a bit of a problem. I think that the section applies to all the groups, that all the handicapped groups are in that definition. It is really where a situation where an employer or landlord denied the person whatever the service was in the mistaken belief that they had some sort of handicap.

I guess an ancillary point to the question of the evolution of the mental health system arises because more and more, as people come out and seek help in the community while they are still going through some form of treatment, there are a lot of questions of confidentiality raised because it may be necessary to share that information with a broader range of people, whereas before it would have been kept, perhaps, within a hospital staff treatment team and things like that. So there are confidentiality problems but we hope that we will be able to overcome those.

Mr. R. F. Johnston: You mention that in 1979-80, there were admissions to hospitals of some 53,000 or something like that. Does that include readmissions?

Mr. Foster: There would be some multiple admissions in there. Yes, that is correct.

Mr. Riddell: Is that figure going up or down?

Mr. Foster: It is going up, but we are plagued by problems of classification. There are different components to the system being brought on stream and institutional beds being taken off. Some types of service would tend to raise the number of admissions without correspondingly increasing the number of actual incidents of these types of problems. So generally it is going up with (inaudible).

Mr. Chairman: Thank you very much, Mr. Foster, for appearing before us today.

The Jane-Finch Community Legal Services notified us this afternoon they will not be here, so we have the Association of Large School Boards, Mr. Stewart and Mr. Lawless.

Mr. Renwick: And Miss Riehm.

Mr. Chairman: Miss Riehm.

Miss Riehm: Mr. Chairman, I would like to introduce the other members who are here with me today. On my left is Mr. Doug Lawless, the executive director of the Association of Large School Boards in Ontario; and on my right, our counsel, Mr. Bruce Stewart.

The Association of Large School Boards in Ontario welcomes the opportunity to appear before the standing committee today, and we wish to assure you that the principles behind the draft legislation are those which the public school system in Ontario wishes to foster in its students. Indeed, they are the principles of fair play in a democratic society.

The Association of Large Schools Boards represents 18 school boards, most of which have enrolments in excess of 30,000 elementary and secondary students. These boards are major employers in their communities and will be expected to demonstrate leadership in carrying out the provisions of the revised Human Rights Code.

While supporting the intent of Bill 7, we wish to identify for you some specific concerns we have about the draft legislation and to suggest amendments. Some of our comments are particular to school boards while others are those of Ontario employers generally.

Of specific concern to school boards, the one which most concerns us is the conflict which we see with the Education Act. Section 229(1)(c) of the Education Act of 1974 requires a teacher "to inculcate by precept and example respect for religion and the principles of Judeo-Christian morality and the highest regard for truth, loyalty and all other virtues."

Because teachers are considered in law to be acting in loco parentis, school boards have a responsibility to ensure on behalf of the public interest that the highest standards of behaviour are maintained by professional staff. In cases where a teacher engaged in conduct which might pose a risk to children, for example, the espousal of a creed, any creed, or behaviour such as cohabitation with a student, school boards have a duty to invoke section 229 of the Education Act.

The association is concerned that once Bill 7 becomes law, school boards will find it difficult to enforce the Education Act, since section 44(2) of Bill 7 purports to supersede the authority of any act or regulation which contravenes the Human Rights Code. How then will school boards fulfil their obligation to the community to serve in loco parentis? This is a difficult question, but one which we feel must be resolved. We would ask the standing committee to reconsider the intent of section 44(2).

Some assurance must be given to Ontario taxpayers that school boards will retain their authority to act in the public interest in situations where the behaviour of an employee offends the standards outlined in section 229 of the Education Act.

A second conflict with another piece of legislation has come to our attention, and this is a conflict between the provisions of the new Human Rights Code and the Age of Majority and Accountability Act. Some committee members will remember that school boards across the province played an active role in the campaign to raise the legal drinking age to 19 years. Since Bill 7 prohibits discrimination in the equal enjoyment of goods and services between the ages of 18 and 65, we suggest that there will be a conflict in the matter of students of the age of 18 who are presently not permitted to drink. There will be difficulty for them because of the conflict between Bill 7 and the age of majority legislation.

3:30 p.m.

Another area which concerns us is in equal treatment with respect to goods, services, facilities and accommodation. The association's member boards agree that all persons should be guaranteed equal access to public facilities as stated in part I, sections 1 and 2, subsection 1. For their part, school boards are attempting to remodel and renovate their buildings so that handicapped persons in particular can use most if not all

facilities. The association's member boards are also conscious of the need to provide equal access to services such as summer school and night school programs. In many instances school boards are offering as broad a range of programs as is possible in schools and other buildings which have been adapted to the needs of the specific client group.

The standing committee no doubt recognizes that without the expenditure of large sums of public moneys, it will be impossible for many school boards to comply with the equal access provisions in Bill 7 for all school facilities. However, at issue here is not merely the amount to be expended but the lack of accountability in the decision making process. Under Bill 7, the question of how much money is to be spent does not rest with the elected representatives but with an independent board of inquiry. Section 38(ii) gives the board of inquiry powers which are much too broad considering the absence of responsibility to local ratepayers. This association firmly believes that a board of inquiry should only be empowered to make public recommendations to a school board or other body if there is an expressed concern that the school board is not, in general, meeting the needs of the handicapped.

We have a concern also with the definition of handicap as outlined in section 9(b), one to four. It is a very all encompassing definition. The association agrees that the denial of employment to a person simply on the grounds that he or she is handicapped is a matter which deserves the attention of the human rights commission. However, when the handicap may affect the person's ability to work closely with children in a teaching or other service capacity, a school board has the legitimate right to decide whether that person is the best candidate for employment.

The standing committee will agree that as employers, school boards would logically take into consideration the conditions included in the definition of handicap when hiring professional staff. Trustees and board officials having due regard for the nature and requirements of the job would certainly want to consider mental disorders or impairments or learning disabilities when determining who should be employed to teach children. Surely this is the school board's obligation if it is truly acting in loco parentis.

The Association of Large School Boards has serious reservations about whether mental disorders, mental retardation or impairment or learning disabilities should be included in the definition of handicap. These things are very difficult to define. If however the committee is content with this definition, we would strongly urge that clarification of what constitutes such disorders be included so that employers will have no doubt as to whether their hiring practices might breach the code.

Section 16 does not, we believe, give adequate protection. While purporting to protect employers, this protection only extends to circumstances where the allegedly handicapped person is incapable of performing the essential duties of a position. If the choice is between two capable persons, one of whom in the past has suffered from mental disorder, should the school board not be able to hire the individual who poses the least risk to children. In

other words, should children be asked to bear the risk of recurrence where another qualified person who presents no risk is available to do the job.

A further concern is caused by section 38(iii) under which a board of inquiry may even change the essential duties of the job to meet the job requirements of a handicapped person. This association is vehemently opposed to granting such subjective powers to a board of inquiry which is not responsible to the parent community, to students or to the tax paying public. We are particularly concerned where such powers may require a school board to hire a person whose limitations may make him or her unsuited to be in daily intimate contact with children. Moreover, the terms "incapable" and "essential duties" are not even defined in the bill.

In the field of education the essential duties of teachers are defined in the Education Act. School boards have a legitimate right to determine the requirements of the teaching position and to judge who possesses the best qualifications to perform the essential duties. It would seem ludicrous to prefer handicapped persons to such an extent that the service they are hired to perform can be altered to meet their needs as opposed to their employer's needs.

This association strongly recommends that a board of inquiry be empowered to question an employer about the qualifications for a job and the choice of candidate only if it is established that the qualifications were devised and applied in a manner which discriminated against handicapped persons.

We have indeed some general concerns which may pertain to all Ontario employers. I would like to address those now. The first is a matter of vexatious, trivial or frivolous complaints. Bill 7 lacks the specific provision to discourage the lodging of complaints that are made in bad faith or that are vexatious, trivial or frivolous in nature. This association maintains that section 31(1)(b) should be expanded to include disciplinary restraints such as a system of awarding costs in cases where a complaint is unsubstantiated. We ask the committee to consider the following three proposals:

(1) A board of inquiry should be empowered to award costs to a person accused of breaching the code if, after hearing the case, the board is satisfied that there was no basis whatsoever for the complaint. The costs would be borne by the complainant.

(2) In any event, alleged violators of the code should recover their reasonable costs from the human rights commission when they are acquitted and where a board of inquiry does not ask the complainant to pay those costs.

(3) Bill 7 should permit an employer to take legal action against an employee in situations where the employer has been wrongly accused. Section 7 states that every person has the right to claim and enforce his rights under this act, to institute and participate in proceedings under this act and to refuse to

infringe a right of another person under this act without reprisal or threat of reprisal for doing so. It is our opinion that this section should be amended to ensure that the present rights of the accused are not denied. For example, we believe that the right of a citizen to sue for defamation of character should be guaranteed under the Human Rights Code.

We have a concern also as general Ontario employers about making reasonable employment inquiries. Section 21(1) states that equal treatment in employment is infringed where an application for employment includes questions into any and all of the prohibited grounds of discrimination. We have no objection to forbidding questions into such established grounds as race, creed or colour. In certain circumstances, however, inquiries into such prohibited grounds as age, record of offences or marital status may be quite lawful. For example, information such as this is often required in order to commence employee benefit plans. We recommend that the code permit inquiries into certain of the prohibited grounds in situations which are clearly specified in the legislation.

A third area of concern to us is the area of sexual harassment. The Association of Large School Boards supports proposed sections 4(2) and section 6 which deal, respectively, with harassment in employment and sexual solicitation by a person in authority. We are concerned, however, by section 38(4) which makes an employer responsible for the harassing acts of employees. Also section 42 is of concern since it makes an employer responsible for any action taken by an employee, even if such action is not within the purview of the employee's authority. Committee members should be aware that other Ontario statutes, for example, section 88(2) of the Ontario Labour Relations Act, stipulate that corporate responsibility only extends to actions done within the apparent authority of the officer or official.

The association recommends that in cases of sexual harassment or solicitation by a person in authority the employer only be held responsible for the actions of the offender if the complainant has brought the matter to the employer's attention and insufficient action has been taken to prevent recurrence of the misconduct. We would also ask the committee to consider expanding section 4(2) and section 6 to protect employees from sexual harassment from their co-workers. Harassment in any form is unacceptable whether it comes from a supervisor or from a fellow employee.

We are concerned also about the enforcement of Bill 7 and about the administration of it. Two examples are the strengthened power of the commission investigator as set out in section 30 and the need for a guaranteed right to a proper defence for alleged violators of the code.

In the first instance we contend that section 30, which increases the powers of the commission investigators, may constitute an infringement of the human rights of the person being investigated. We believe that the drafters of Bill 7 did not intend to impose an obligation of self-incrimination on the

individual in section 30(6). Assuming we are correct in this opinion, we suggest that this subsection be removed from the legislation.

We would also like to see a procedure included in Bill 7 to ensure that persons alleged to have breached the code are given the full particulars of the case against them. Current practice only provides a copy of the complaint to the accused. The Human Rights Code should provide the same rights to a proper defence to alleged violators as do other legal practices such as the Criminal Code. We recommend the addition of such rights to be included under section 35.

On behalf of the association's member boards, I would like to thank you and all the members of the standing committee for the attention you have shown us. We hope that the issues we have raised will be clarified before Bill 7 passes into law. We will be pleased now to answer any questions you may have.

Mr. Chairman: Thank you very much.

Mr. Stevenson: I would like to clarify your position here on what you feel the infringement is of your ability to hire the teachers that you want or the qualifications of those teachers. As I understand Bill 7, you still have the right to hire whomever you think is best for the job, and all you have to do is state that you have a record of the type of qualifications you are after and a record of possibly some of the people who did apply and were not hired and why they were not hired. I guess I'm not clear in my own mind where you see that this has been altered really.

Mr. Stewart: Could I ask you to look at section 16 of the draft? That's the problem because section 16 addresses itself to really giving an excuse to people for why not to hire somebody for other grounds, in this case the ground of handicap.

What it says in section 16 is that you can't take into account a handicap unless the person is rendered incapable of performing the essential duties of the job. The fear that is expressed is that, as between two very well-qualified people, one of the well-qualified people may have, for example, a history of mental disorder. Therefore, you have got both people capable of performing the essential duties of the job. Which one is the school board going to choose? There is no question which one they would like to choose, that is, the one who does not bear any risk to children. And that's the simple point that we are making.

Mr. Brandt: Would that not be covered under the bill where there is a bona fide reason for not hiring that particular person?

Mr. Stewart: I think 16 is the attempt to provide that out. What we are saying is it simply does not go far enough. The other sections of the bill, with respect, I don't think provide an excuse. They do for some other grounds, but not for the question of handicap. For example, section 21 addresses exceptions for age and marital status and record of offences, but section 16 is the section that zeroes right in on the handicapped.

Mr. Brandt: Arguing from the ministry's side for the moment, one of the problems with that particular section and why it is worded the way it is, is that there is the problem of an employer very clearly declining the requirements of the job in such a way as to discriminate against an individual, as it says here, where the essential duties are defined in such a way that obviously a handicapped person could not perform them, and yet they are not the essential duties of that particular position. How do you get around that in such a way as to bring about the kind of balance that this bill would like to bring into law?

Mr. Stewart: Perhaps we are trying to do two things at once here. The test that is being put in section 16 is basically a minimum qualification test. I think most employers--forget about any prohibitive grounds--usually want to hire the best person or promote the best person, as the case may be. They don't just want to hire the person who has got basically the minimum qualifications.

That is the first problem right there whenever you start bringing in the prohibitive grounds, and I think handicapped would be the most serious. I find it difficult to imagine any of the other grounds providing the practical difficulty, although I am sure there would be situations.

The next question that comes in is where you have got that evil intent and you are trying to do things indirectly that you can't do directl. Frankly, I think this piece of legislation is well equipped to handle that problem. If you look, for example, at section 8, it says, "No person shall infringe or do anything that results directly or indirectly in the infringement of a right..."

It is always a question of proof of whether a person has set up qualifications that are shallow or have no meaning. We don't say that you are not right in having that concern, but I think there are already provisions in the legislation which give you a framework behind which you could attack that sort of thing. In the meantime, we are left with the choice of trying to get the best person in the job and we fear that the handicapped position, in particular, and the minimal qualifications of section 16 will provide a real problem for all employers, but particularly for school boards in the question of mental disorders.

Ms. Copps: Did you have a chance to hear the brief that was presented just before yours?

Mr. Stewart: Yes, I did.

Ms. Copps: I understand from the statistics that they have presented that if you are talking about mental illness, I gather that 15 per cent of the population at one time or another will suffer some form of mental illness, or one in six. How many employees would be in all the school boards grouped under your domain?

Mr. Lawless: About 60,000.

Ms. Copps: So if you took the one in six, the chances are that at present you have employed thousands of people who have experienced some form of mental illness. How would you define the kind of mental illness that would be detrimental to students if two people were exactly equal in applying for a job?

Miss Riehm: For one thing, we think it desirable for the teacher to be present as often as possible in the classroom, so lengthy absences are disruptive to the student whether the cause of those absences is physical or mental health.

Secondly, teaching is a stressful and difficult occupation. It is a profession which demands a lot of competence and a lot of strength on the part of teachers. We believe that we would not wish to have potential employees suffer deterioration of health because of the stresses of the occupation. It is a difficult job to do well.

Ms. Copps: I think my question is, if you are dealing with one in six persons in the population, how would you define the extent or the gravity?

Mr. Stewart: One in six are potentially, but I don't think that is what we were talking about. You asked us to define the people who may represent--and that "may" is a broad word--a risk to children.

3:50 p.m.

Ms. Copps: If a person has ever been to a psychiatrist, would they fall into that category?

Mr. Stewart: I hope not.

Ms. Copps: I guess it becomes a question of how do you draw the line. I find it difficult, when you have gone to the Ontario Medical Association, which presumably would be in a very good position to access that kind of effect of mental illness on the job market.

If the OMA feels that people who have had a potential history of mental illness should be treated equally in the eyes of the law, how can the school board step in as applying a stricter standard than that that would be applied by the OMA, which presumably would be a little closer to that type of illness?

Mr. Stewart: I think it is a question of perspective. I think we started off today saying that there is really no quarrel here with any of the objectives of this legislation. I mean one can't quarrel with it. What you come down to is its application. The trouble with the bill--and this isn't sort of a criticism; it is a very difficult bill to draft from a responsible point of view--is you have in the first seven sections broad statements of principle with which we all support. Then the practicalities of life start chipping away at those.

This is the problem. It is just your perspective. It is not that we think there is a disagreement with the OMA. School boards would have to rely in their concerns on medical, or in the case of the given example, given psychiatric advice, where that indeed represented a risk. I do not imagine the situations would be very numerous, but the fact that one can postulate the situation is the concern.

Ms. Copps: Andy may be able to get this clarified for us because I think the discussion of the drinking age did come up at a previous session. There may be some way of legally getting around that because I believe there is a two-year period in which the primacy clause comes into effect.

Mr. Brandt: The other end of it was the qualifying age for children's aid societies and so forth. There is that whole grey area in there that would take you from 16 to 19 with respect to a specific definition in the bill. Is it not only the drinking age.

Ms. Copps: The point that you raised about acting in loco parentis, if you did have, for example, the unusual situation where a student, depending upon the age, was cohabiting with the teacher, which presumably would violate the legislation as set out in the Education Act, how would that be dealt with in this legislation? Can we get a clarification on that point that they also raised, where they are acting in loco parentis and the Education Act requires that they apply X number of Judaeo-Christian moral principles--if you have a situation where a teacher is cohabiting with a student where you wouldn't be allowed to discriminate against someone on the basis of marital status or on the basis of living companionship?

Mr. Brandt: Were you suggesting that if that arose in this particular instance where there was cohabitation between a teacher and a student, this bill would not allow you to dismiss that teacher? Is that what you were suggesting?

Ms. Riehm: That would be an uncertain area.

Mr. Brandt: I do not think the bill would do that.

Mr. Stewart: Look at the definition of marital status, with respect. Marital status is defined to mean common law marriage and common law marriages have a definition as cohabitation as man and wife.

Mr. R.F. Johnston: That is not acceptable for school boards now.

Ms. Copps: The question that may come into that, also, is the issue of age. I wanted to ask you something as a follow-up to that, and maybe you should get some clarification on it. There have been presentations in the past, and you probably have some experience in your capacity of acting for students as well as teachers, for including the students in that grey area between the

age of 16 and 18 in the legislation. For example, if a child has left home and is over the age of 16 but remains in school, sometimes you have to have a trustee appointed in order to allow the child to enter a school board which is outside the previous place of habitation. Do you have any feelings on inclusion of students between 16 and 18?

Mr. Lawless: Mr. Chairman, Ms. Copps, this issue raises two problems. There is one way of dealing with the person who cohabits with a student, whether he is 16, 17, 18 or 19. In one issue, where the person is employed, there are ways of dealing with that now. The difficulty is when you are hiring someone who has a history of this. I interpret the bill to mean that if someone were chosen over that person because of that then a charge could be laid under this act as proposed.

Ms. Copps: This is with respect to the issue of marital status. What about not taking into consideration the issue of cohabitation--and I hope we can get that cleared up. What about the general presentation which has been made by other groups that the act presently covers those between the ages of 18 and 65 through the definition of age and it has been suggested that that be reduced to the age 16 to conform with some legally accepted age of adulthood. I just wonder if you had a position as a school board or not?

Miss Riehm: At the present time school boards act in loco parentis for students who are under the age of 18, so beyond the age of 18 we don't act in that precise role. We have an obligation to them, yes, but not in loco parentis.

Ms. Copps: Presumably then you would support the legislation as it exists from 18 onward, and you would not want to see the inclusion of rights, the application of the act, for those between the ages of 16 and 18? If you don't have any position then we could talk about it later obviously.

Miss Riehm: I don't believe we have a position on that. Certainly, students under the age of 18 would have a legal guardian if they are in school.

Ms. Copps: The reason I just raised that--I don't want to belabour the point--is that when I did work in a constituency office I ran into the occasional situation where a student who in fact had left home but wanted to carry on with school and didn't have a legal guardian in the city of Hamilton ran into tremendous difficulty in trying to get back into the school system, and it was kind of an unfortunate situation that maybe could be covered if that were lowered.

Mr. Chairman: Maybe just to clarify as well, if the Legislature passed a resolution that the Education Act would have supremacy over Bill 7, does that then satisfy your concerns?

Mr. Stewart: I think that would because that basically would leave it to a question of judgement in any one case, and I think that would be quite satisfactory.

Mr. Chairman: Correct me if I am wrong--this has been up before--is it not that the Legislature has the ultimate authority, and the reason for allowing two years to comply, as I understand it, was that the Legislature may indeed have to proceed that way? Am I wrong there?

Mr. R. F. Johnston: Yes, and to phase in, I presume, mostly. But was it also, though, to have exceptions?

Mr. Brandt: No, I think it was quite the opposite, so there couldn't be any exceptions. That's why it's very precisely pointed out in the bill that this would have primacy over all other legislation--not just the Education Act but any other act of the Legislature.

Mr. Chairman: Unless specified.

Mr. Brandt: But I would think it would have to be specifically contained in the bill.

Mr. Stewart: The way it reads is legislation which perhaps is normal. Surprisingly, though, it seems to talk in terms of the exception being in the other act rather than in this particular bill, which can support that there is going to be legislation after the fact rather than concurrently.

Mr. Riddell: I was pleased to hear you suggest that certain questions to applicants should be permissible even though they may on the surface appear to be discriminatory. I'm thinking now of a situation where I was maybe hiring a physical education instructor. I feel that I should be able to ask that person if he or she has any physical disabilities because a lot of these physical instructors, of course, conduct their courses by demonstrations, and if somebody has a chronic back ailment he is not going to be able to go through the manoeuvres that are necessary when teaching physical education.

Or if I am a farmer and I want to hire somebody to help me on the farm there's absolutely no sense in my taking on someone who has a back ailment, because bumping around on that farm machinery or doing the heavy lifting that has to be done is just impossible. I have even had people come to me saying they want to go to work in the liquor stores. They have told me that they have a back ailment and this is why they had to leave the heavy equipment job that they had, maybe driving a bulldozer, and they would like to get into a liquor store.

I said, "Do you realize that you have to lift cases of liquor and beer?" I feel there are some questions you have to ask that may appear to be discriminatory. I would agree with you people in that respect.

4 p.m.

Miss Riehm: The example you have given is one that would be one of concern to us.

Mr. Brandt: Again, they could not perform the essential duties. There is nothing discriminatory about asking if they can lift something heavy, if that is an essential duty required to perform that particular task.

Mr. Stewart: That is right. The concern here is that in section 21 it states quite clearly that you cannot ask questions in your application for employment and in your general solicitations for employment that elicit any of these grounds which may be lawfully taken into consideration. That is the concern. You are in a strange, two-stage process.

In fact section 22 goes on and says that you have to give such people an interview before you can dismiss them. Just to follow the typical education instructor example, some school boards today are finding that if they put one job in the paper, because of the surplus condition for school teachers they will get literally--I am not exaggerating--500 applications. Obviously, if they are doing the job properly in the application for employment, they should try to weed out at that level the problems such as you have described. While you cannot ultimately reject a person for those grounds, in the meantime you are put to quite an amount of problems in having to interview everybody. That is the difficulty.

Mr. Kennedy: The current Education Act is quite general, as I recollect it, on the qualifications of say, teachers, if this is what we are speaking of. Is that correct? Is there conflict between that and this? If that has supremacy, is it given adequate description as to qualifications in the Education Act? It seems to me it is a judgement of a board and that is why the board is there, in essence. One of their duties is to hire teachers, the best teachers they can find.

Mr. Lawless: It is not in conflict with the duties; it is in conflict with the Legislature and what the Education Act says under 229 about the type of program you are supposed to carry out in the schools. That is the section with which it is in conflict. I do not think there are any duties listed in the Education Act or even in the regulations that a teacher must do.

Mr. Kennedy: That would be in respect of qualifications.

Mr. Lawless: I do not know of any.

Mr. Kennedy: If it is contained in the Education Act and this does not apply to the Education Act, you see a problem.

Mr. Lawless: It does apply and will after two years.

Mr. Kennedy: It will not impinge on the Education Act. That is what I read in section 17.

Miss Riehm: Section 17?

Mr. Lawless: No, that is another question. That is the rights granted to the separate school boards under the Education Act and the BNA Act.

Mr. R. F. Johnston: That section is so anachronistic, I cannot believe it. Do you have any Muslim teachers, any people of other than Judeo-Christian morality in the schools? I remember one or two of my teachers who had a little trouble with a couple of these sections--frugality was one, and sobriety and other things.

Miss Riehm: It is the practice of school boards to not deal with it in as strict terms as those in which it is written, but to deal with it in middle of the twentieth century. But we still value it very highly.

Mr. Riddell: You people have shied away from any comment on the inclusion of sexual orientation in this bill. This is something we as a committee are going to have to grapple with. Would you care to comment, seeing that you represent the school board?

Miss Riehm: We would be opposed to including sexual orientation in the act. The practice of school boards is that sexuality is a private matter for teachers, but that there is no place whatsoever in the classrooms for proselytizing sexuality of any kind, homosexual or heterosexual. We would be concerned that if that were in the act, the board had difficulty in eliminating from the school teachers who were advocating a lifestyle which would be contrary to the wishes of parents.

Mr. Riddell: Would you suggest that they would be advocating a lifestyle if indeed one of the teachers happened to be a homosexual and appeared at a school dance with either his boyfriend or girlfriend?

Miss Riehm: That would be unacceptable to parents, I believe, and to school boards. I think we would consider that to be a proselytizing example.

Mr. R. F. Johnston: Is it proselytizing for heterosexual partners to go to dances?

Miss Riehm: I'm not quite sure who has the floor there.

Ms. Copps: Sorry. I was just going to ask about the same question, because you mention that in your experience proselytizing of either a heterosexual or a homosexual nature is unacceptable. I just wondered why the clarification.

Miss Riehm: Again we have to consider the risk to children. I believe that the school boards would find no place for any teacher who made any heterosexual advances towards a student, either.

Mr. Eakins: Has it been a problem (inaudible)?

Miss Riehm: It has occasionally been a problem. It is usually dealt with quietly. Mr. Lawless would probably be able to speak about that.

Mr. Lawless: It has not been a great problem, but it has been dealt with with a lot of discretion and it hasn't created a lot of stir.

Mr. Eakins: You feel, then, that it really hasn't been a problem that has to be included, then, in legislation.

Mr. Lawless: I don't think so.

Mr. Chairman: Thank you very much, Miss Riehm, and Bruce and Doug, for appearing before us today and making your views known to us.

Early this morning I felt that maybe it was a little unfair to broach the subject with you. It wasn't on the agenda particularly when we had adopted a pattern of essentially no votes or voting on anything contentious in any way until such time as we finish the hearings.

The Rogers Cable TV people have made a request that they be allowed to come in and televise. The information request was made this morning. I suspect, as best I was able to find out, that the committee probably does have the authority, if they so wish, to exclude them on a full-time basis. I would like direction from the committee, therefore, on the request. I don't know if there are any other questions.

Mr. Eakins: I guess my only question is whether it is necessary that they receive approval. Are not all the press welcome to come in at any time? As I mentioned this morning, I have been on many different committees in which the press come in, take some shots and leave. Some stay longer than others. What's the difference if they want to stay, whether it is the press, the radio or the television people? What's wrong with their staying for the full period if they want? Why do we have to say, "Yes, you may" or "No, you may not"? I thought it was open and they could come if they wished.

Mr. Brandt: You could be discriminating.

Mr. Chairman: The question seems to have been broached, and I wasn't sure that as chairman I had the answer, that yes there is a problem or no there isn't a problem. I felt it best to bring it to the committee. I am not sure of the history all the way along. I checked with the clerk's department. Maybe an easier way to broach it is to ask whether there is any objection to my notifying them that we have no objection to their televising as they see fit if and when they see fit, providing they don't disrupt the proceedings.

Mr. Eakins: Are there extra costs involved? I am thinking of whether it is the responsibility of this committee to pay some of these.

Mr. Chairman: Well, they have to bring their own coffee, that's for sure. I don't think there is, but it's a good question.

Mr. Eakins: I'm only saying that when we sat on the Ombudsman's committee we had to pay special translation at a fairly high cost. As far as I'm concerned I see nothing wrong with any of the press coming in whenever they wish. If they are inclined to stay for the full proceeding that is up to them, if not, so be it.

Mr. Chairman: Is there any objection then, providing there is not a significant cost to us and it does not cause a significant disruption that we would allow it as they see fit? I just felt that as chairman I ought to bring that to you and not take it upon myself.

Mr. Eakins: I would suggest it would be up to their initiative, Mr. Chairman.

Mr. Chairman: All right, if there is no objection to that then I would suggest we adjourn until 10 o'clock tomorrow morning.

The committee adjourned at 4:12 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

THE HUMAN RIGHTS CODE

WEDNESDAY, SEPTEMBER 9, 1981

Morning sitting

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Harris, M. D. (Nipissing PC)
VICE-CHAIRMAN: Stevenson, K. R. (Durham-York PC)
Copps, S. M. (Hamilton Centre L)
Eakins, J. F. (Victoria-Haliburton L)
Eaton, R. G. (Middlesex PC)
Havrot, E. M. (Timiskaming PC)
Johnson, J. M. (Wellington-Dufferin-Peel PC)
Johnston, R. F. (Scarborough West NDP)
Lane, J. G. (Algoma-Manitoulin PC)
McNeil, R. K. (Elgin PC)
Renwick, J. A. (Riverdale NDP)
Riddell, J. K. (Huron-Middlesex L)

Clerk: Richardson, A.

From the Ministry of Labour:

Brandt, A. S., Parliamentary Assistant

From the Ontario Human Rights Commission:

Brown, G. A., Executive Director

Witnesses:

Hale, G. E., Ontario Policy Director, Canadian Organization of
Small Business

Wilson, R. J., Co-ordinator, Municipal Police Authorities

From the Ontario Association of Chiefs of Police:

Erskine, J. L., Deputy Commissioner, Ontario Provincial Police

Hamilton, R., Staff Superintendent, Hamilton-Wentworth

Wales, J., President

Welsh, T., Chief of Police, City of Ottawa

From the Ontario Restaurant and Foodservices Association:

King, R., Chairman, Industrial Relations

Warne, G., President

From Parent Finders Incorporated:

Brinkos, M. J., President

Mercer, W. E., Vice-President

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, September 9, 1981

The committee met at 10:08 a.m. in room 151.

THE HUMAN RIGHTS CODE
(continued)

The Vice-Chairman: Ladies and gentlemen, we will start the hearings for today. As far as I am aware, there are no special things that have to be discussed this morning; so we can start right into the hearings.

The first witnesses today are representatives of several groups, such as police associations, the Ontario Association of Chiefs of Police. We have the deputy commissioner from the Ontario Provincial Police and a representative of the Municipal Police Authorities.

Would the main spokesman introduce himself and the people he has with him, please?

Chief Welsh: I am Chief Tom Welsh of the Ottawa police force and chairman of the legislation committee of the Ontario Association of Chiefs of Police. On my far right, we have with us the president of the Ontario Association of Chiefs of Police, Jack Wales from Lindsay.

Interjection: (inaudible)

Chief Welsh: He mentioned that. He saw your name, sir. We also have Deputy Commissioner Jim Erskine of the Ontario Provincial Police, who is also a member of this committee, and Staff Superintendent Bob Hamilton of the Hamilton-Wentworth police force, who is also on this legislation committee.

If I may, I would like to introduce Mr. Robert Wilson, who is here representing the Municipal Police Authorities.

We are very pleased to have the opportunity to come here today and address Bill 7, which is an Act to revise and extend Protection of Human Rights in Ontario, to the standing committee on resources development.

The legislation committee of the association also has had the opportunity of reviewing the brief of the Municipal Police Authorities, and, of course, we endorse many of their points. At the risk of being repetitive, we wish to emphasize and expand on many of those items and raise others that are of concern to this association.

The comments in this brief will be directed in two general areas: first, the effect of many provisions in the bill on the hiring and promotion of police personnel and the administration of police forces; and, second, our concern with the very broad and

potentially dangerous enforcement provisions in the bill.

I must say at the outset, and I say this with the greatest respect, in reviewing the bill, from a police standpoint we find it almost mind boggling. It is just something else again.

Section 4 of Bill 7 provides that "Every person has a right to equal treatment in employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, record of offences, marital status family or handicap."

We shall deal with citizenship first. It is this association's position that no person should be appointed to a police force in Ontario unless he or she is a Canadian citizen. Though we agree that there should be no discrimination on the basis of ethnic or national origin, citizenship is open to anyone who has been in this country for three years and who fulfils certain basic requirements.

We do not feel that it is unreasonable or discriminatory to require a police officer in this province to have demonstrated his or her commitment to this country by obtaining Canadian citizenship. Police officers are continually being told that they must be more familiar with the history and culture of various minorities in order to better understand and deal with persons who are members of these minorities.

I should like to simply say that, of course, with respect to that, we have seen a lot of this in the Toronto area itself, and I think all of us know what we are talking about.

We feel that it is equally fair that the applicants for positions in police forces should have some demonstrable commitment to and understanding of this country.

Canadian citizenship would at least ensure that an applicant has three years of Canadian living experience upon which to base later law enforcement judgements. Both the 1974 report of the Task Force on Policing in Ontario and the 1980 Clement report, Review into the Standards and Recruitment Practices of the Metropolitan Toronto Police, expressed the same conclusion and recommendation: Police forces should have the option of giving preference to applicants who are Canadian citizens.

We are concerned with the age. In the present code, age is defined to mean any age of 40 years or more and less than 65 years. Bill 7 would extend age as a prohibited ground of discrimination to mean an age that is 18 years or more and less than 65 years.

Though Ontario regulation 680 under the Police Act prohibits the appointment of persons as police chiefs, constables or other police officers unless they are 18 years of age or over, most if not all municipal police forces in Ontario require an individual to reach the age of 21 years before that individual is awarded full status as a police constable. The logic of this practice is that persons obtain and exhibit a greater degree of maturity and

greater ability to competently cope with demanding social situations with an increase in chronological age.

Again, the Clement report recommended that the Police Act of Ontario be amended to require that police officers be not less than 21 years of age. We support this recommendation, and in Bill 7 there should be an exception--similar to that set out in section 15 in relation to citizenship--to provide that the person's right to nondiscrimination because of age is not infringed where age is a requirement, qualification or consideration imposed or authorized by law. This would also require amendment to section 32(b) of regulation 680 of the Police Act of Ontario.

We do not believe that municipalities and boards of police commissioners should be forced to defend, in an inquiry or otherwise, the requirement that a police officer be at least 21 years of age on the grounds of reasonableness or bona fides of that requirement.

Record of offences: Bill 7 would give a person a right to equal treatment in employment without discrimination because of his record of offences. Record of offences is defined to mean a conviction for (i) an offence in respect of which a pardon has been granted under the Criminal Records Act (Canada) and has not been revoked, or (ii) an offence in respect of any provincial enactment.

Though the bill under section 21(6) states that the right to equal treatment and employment is not infringed where a person refuses to employ another for reason of record of offences, this could be done only where the record of offences "is a reasonable and bona fide qualification because of the nature of employment."

We are concerned that a rejected applicant for employment might argue that his particular record of offences was not, or was no longer, relevant to employment in a civilian or officer capacity, and as such was not a reasonable and bona fide qualification for employment.

We do not believe that a municipality or board of police commissioners should have to justify rejecting an applicant from employment with the police service on the basis of his record of offences.

The application of the bill's provision could become ridiculously oppressive in hiring, promoting and terminating employment of officers in the police service.

For example, if a law enforcement agency received an application for employment as a police constable from a person whose licence to drive a motor vehicle was currently suspended under the Highway Traffic Act and decided that because of his driving record he was not a suitable candidate for employment as a police officer, it would have to first tell him that this was the reason for denial of employment in a personal interview.

The agency then could be subject to responding to a complaint, investigation and inquiry and be required to support

its position that a licence to drive a motor vehicle was a reasonable and bona fide qualification for employment as a police officer.

I think all of us have addressed the situation of high-speed chases. We, the police, are extremely concerned about this. We must have people on our force who will respond the way we feel they should respond when we are concerned with high-speed chases.

Again, alluding to the remarks I have just made with reference to a person applying who may be suspended or have bad driving habits, we simply can't afford to take these people on our police force or subject us to respond to a complaint, investigation and inquiry, or being required to support a position that a licence to drive a motor vehicle was a reasonable and bona fide qualification for employment.

As a second example, let us suppose an applicant convicted of armed robbery and pardoned should apply for employment as a police constable. Surely the force should be able to reject the application on the basis of his previous record without going through a full inquiry.

The fact of conviction for a criminal offence, even if pardoned, is one that a law enforcement agency should always be able to inquire into when in considering applicants for employment.

I can think of a situation in Ottawa in my own area where I know of an individual who ran afoul of the law and was sentenced at one time. He was not charged with any offence after that for over 10 years. On the face of it one would say that surely this individual would warrant a pardon. But we do know of this individual and he has continually associated with criminal activity, with criminals, and it was only within the last year or so that he did again run afoul of the law and has been charged. So we are very concerned with this kind of thing.

Although police forces in this province do not always reject applicants on the basis that they have a conviction for a minor provincial offence, the manner in which a person responds to questions that attempt to elicit this type of information is an important aid in assessing his honesty and reliability.

Further, we feel strongly that criminal history information, whether subject to the granting of a pardon or not, and provincial offences history information are important factors to be considered in assessing the suitability of a candidate for either civilian or officer positions within a police force.

The public interest demands that those involved in police administration exercise sound judgement in the selection of the most suitable and deserving candidates. The provisions related to the record of offences in the proposed bill would limit the field of inquiry and selection that a force can exercise and permit the possible substitution of the opinion of yet another administrative board and judgement as to what is in the best interest of good policing. Police and other security forces should be excluded from the application of these record of offences provisions.

Concern with the handicapped: Though this association accepts as reasonable the proposition that one should not be able to discriminate in employment against a person who is handicapped, the manner in which the bill is drafted is so broad and in some cases vague that it would be most difficult to know what criteria would need to be met to avoid a charge of discrimination on the basis of handicap.

Even though the bill provides that a right to nondiscrimination because of handicap is not infringed where the handicap renders the particular person incapable of performing the essential duties attending the exercise of the right, it is not left to the employer to have the ultimate right to determine what is an essential duty, but provides for an investigator, the commission or a board on inquiry to determine that.

10:20 a.m.

The bill would also allow a board of inquiry to order that a party take such measures as will remove an obstruction or provide an amenity for a handicapped person and to make a finding as to whether the equipment or the essential duties of employment could be adapted by a police force to meet the needs of the handicapped person who seeks employment. Boards of inquiry therefore would be given the ability to modify the responsibilities of a position by requiring that only the essential duties are to be performed.

We are concerned that the municipalities and boards of police commissioners might be called upon to provide amenities in order to accommodate the hiring of handicapped persons at significant financial costs that would be difficult to anticipate or meet.

It might be preferable to provide in section 16, as is suggested by the Association of Municipalities of Ontario, that a right to nondiscrimination because of a handicap is not infringed where the handicap renders the particular person incapable of performing all of the duties, rather than simply the essential duties of the job involved.

I have to keep referring to Ottawa, where we have a considerable number of demonstrations continually. Quite often we have our backs to the wall with our resources and we simply have to use every individual we are able to lay our hands on within the police force. That means taking the people assigned to inhouse information or desk duties and putting them out on the street where we might need them to deal with any demonstration of any size.

Association: In addition to the prohibited grounds of discrimination set out in Part I of Bill 7, the bill also provides that a person's rights are infringed where the discrimination is because of relationship, association or dealings with a person or persons identified by a prohibited ground of discrimination.

Most, if not all, police forces in the province have regulations concerning the type of associations they may keep. For

example, the Metropolitan Toronto Police Force states in section 4.2.1 of its regulations (bylaw 22 of the Metropolitan Board of Commissioners of Police):

"A member shall not live with or associate with any person or persons through which association he is likely to bring discredit on the reputation of the force or create doubt as to his ability to fulfil the conditions of his oath of office."

Many individuals and groups in our society today may only have been convicted of provincial offences or offences in respect of which pardons have been granted but may none the less be persons with whom police officers should not associate.

For example, it might be said to be discriminatory to discipline an officer if he associates himself with the Ku Klux Klan, to discipline a Jewish officer for joining the Jewish Defence League or to discipline an officer for associating with a person known to be involved even on the fringes in organized crime, even though such groups or persons may not have actually been convicted of anything other than relatively minor offences.

Again we say we are very concerned with this. We also see in the Police Act of Ontario that police officers in Ontario are not allowed to be involved with trade unions and the like. We have an association, collective agreements, this kind of thing. We have seen in other parts of this great country of ours where police officers have the right to strike. We abhor this kind of thing. It is just not palatable to us, any more than it is to the citizens of this province. For that we are quite happy, and we would just hate to see this get in where police officers can get themselves involved in trade unions. When it comes to strikes, our position has to be not to be seen in any way where there could seem to be any collusion of any sort. We have to be in the middle as always but yet apart.

Section 13 of Bill 7 provides: "A right under Part I is infringed where one of the grounds for the conduct complained of is an infringement of the right, notwithstanding that other grounds for the conduct also exist."

This provision would not only permit an investigator, the commission or a board of inquiry to become involved in the deployment of police personnel and the administration of the force but, we suggest, could lead to a flood of groundless complaints such as, "You are only transferring me because I am black."

It may be in the interests of effective policing to assign only persons of specific racial or ethnic backgrounds or of a certain sex to certain duties. In such cases, discrimination may be alleged to occur even though effective policing could not be accomplished without it. Providing a formal basis for the receipt, investigation and prosecution of complaints of this nature can only provide a further opportunity for outside authorities to interfere with and assert control over the management and autonomy of police forces.

Advertising for employment: Section 21(1) of the bill provides that the right under section 4 to equal treatment in an employment is infringed where an application for employment is used, or an invitation to apply for employment is disseminated, that directly or indirectly classifies or indicates qualifications by a prohibited ground of discrimination. This could cause an administrative nightmare in the following way:

First, with respect to any particular opening, police forces would have to accept applications from anyone between the age of 18 and 65. Second, one might argue that the force would be prohibited from asking an applicant's age except in a very general terms such as, "Are you between the ages of 18 and 65?"

It may not be possible to ask, "Have you ever been convicted of a criminal offence?" or, "Do you have a criminal record?" Rather, the question may have to be framed, "Have you ever been convicted of an offence in respect of which a pardon has not been granted and has not been revoked?"

Furthermore, an application may not ask, "Have you ever been convicted of a provincial offence?" Police forces could not even ask an applicant if he or she had ever been convicted of an offence under the Police Act of Ontario.

Once a police force decides to refuse employment to a person for reasons of age, sex, record of offences or marital status, presuming that they are reasonable and bona fide qualifications because of the nature of the position, the applicant cannot be refused the employment except after a personal interview according to section 22 of the bill.

In most forces this would mean that one could not eliminate a large number of applicants on the basis of age, sex, record of offences, or marital status, presuming that the information even was available to prepare a short list for interview purposes, but would have to personally interview all of those persons to advise them of the reasons that they were not qualified for the position. In circumstances where there are hundreds of applicants for small numbers of positions, this requirement is totally unnecessary.

I can honestly say we have all kinds of applications, and this would be a real problem with us if we had to go through this exercise.

Combined with the ability of an applicant to dispute the reasonableness or bona fides of the qualification, a requirement for a personal interview would merely complicate and make more costly the administration of police forces, some of which already must deal with many thousands of applications every year. Police forces should be exempt from such requirements.

On complaints, under enforcement provisions: The present Ontario Human Rights Code provides that any person who has reasonable grounds for believing that any person has contravened the provision of the act may file with the commission a complaint in the form prescribed by the commission.

The new proposal provides a wider basis for complaint in providing that, where a person believes that a right of his under this act has been infringed, the person may file with the commission a complaint in a form approved by the commission.

The new proposal permits the laying of a complaint on the basis of mere belief, whereas the present code at least requires that the belief be based on reasonable grounds. We suggest that this expansion will only encourage the laying of frivolous complaints with benefit to no one.

Here again, we get back to dear old Ottawa. We have a certain counsel in the city of Ottawa who at every opportunity lays these kind of complaints, goes to the press, uses the press, and it is getting to be a nightmare. I suggest that, whatever his motives are, they are certainly not in the best interests of policing or for the citizens of Ottawa or the citizens of Ontario.

Investigation: You are already aware of significant negative comment about the very broad powers of search, seizure and interrogation, without warrant, that are contained in section 30 of Bill 7. We echo these concerns, as we find the nature and breadth of the powers proposed for commission investigators extremely objectionable and offensive to a democratic community.

10:30 a.m.

Bill 7 would place no limits whatsoever on what commission investigators can examine and require the production of. Police investigatory and intelligence records, to give one example, contain extremely sensitive personal information and such might be compromised if powers of this nature are granted to commission investigators. We are categorically opposed to them having this breadth of authority. In particular, police investigatory and intelligence files must be excluded totally from the ambit of this section. The police facilities performing these functions should be similarly protected.

Commission investigators should be required to base their investigations on reasonable and probable grounds. They should be required to obtain a warrant in order to seize desired documents or articles. There should be some judicial supervision of the activity of the investigators generally.

Indeed, if the proposed Canadian charter of rights and freedoms, which forms Part I of the Constitution Act, 1981, becomes law in its present form, one might argue that the broad investigatory powers given by this section would be in violation of the charter guarantees, specifically sections 8 and 9 which state that "everyone has the right to be secure against unreasonable search" and "the right not to be arbitrarily detained or imprisoned."

We believe the investigatory powers proposed in Bill 7 are unnecessarily and dangerously broad. We are very concerned about that. Police authorities do not have that authority now, and rightly so. We are quite happy that, on reasonable and probable

grounds, we can take out a warrant; in our submission this should be the way it is, even for these people.

Section 35 provides that a person investigating a complaint may call upon a police officer to assist him in the exercise of his powers under this section. Police forces do not wish to be allied with commission investigators in the exercise of the broad investigatory powers proposed in this bill. Further, police officers historically and consistently have not been required to become involved in investigations of this nature unless there is a breach of the peace occurring or the actual threat of same.

In either of those cases there is no need for additional legislation, because police forces already respond to requests pursuant to other statutes, including the Police Act of Ontario and the federal Criminal Code. We have consistently recognized our duty to respond in these cases but are quite concerned with the police uniform and badge being used in what might be perceived as an intimidating or threatening manner to support investigators with such broad powers.

The appointment of boards of inquiry: Presently the human rights commission makes recommendations to the minister as to whether or not a board of inquiry should be appointed. The minister has the discretion whether or not to appoint such a board. The new bill removes that discretion from the minister and requires that he shall appoint a board of inquiry where the commission requests him to do so.

We believe that the discretion reserved to the minister should be continued, as it provides an effective method for elected representatives to control a possible explosion of the demand for appointment of boards of inquiry. It is significant to point out that, once the minister is required to appoint a board of inquiry, that board must hold a hearing. I think we all have seen the cost of these boards.

Orders of a board of inquiry: Section 38 of Bill 7 would permit these boards to make orders affecting the internal operation of law enforcement agencies in this province and would be a usurping of the function of municipal councils, boards of police commissioners, the Ontario Police Commission and the Ministry of the Solicitor General.

In our opinion, these boards of inquiry, in so far as law enforcement agencies are concerned, should have the power to recommend and persuade only, rather than to order.

In conclusion, we certainly thank you for the opportunity of presenting this brief to this committee. Lest any of these comments be misunderstood or misconstrued, we will always share the belief, as it was expressed by the Honourable William G. Davis in an address delivered by the Deputy Premier to the Canadian Association of Human Rights Agencies conference, that "a police officer is as much a sworn protector of human rights as is any human rights commissioner."

The Vice-Chairman: Thank you, sir. Are there any other comments that any of your people might wish to make at this time?

Mr. Wilson: Sir, speaking on behalf of the Municipal Police Authorities, I just want to say when you read our brief you will find that we share the concerns expressed by the chief. They have viewed them perhaps from a more purely administrative point of view than we have, but our concerns are identical.

Particularly we feel the wide investigatory powers are actually dangerous to civil liberties within this province to the degree that one is tempted to quote Charlotte Corday, who said, "O, Liberty, what crimes are committed in thy name."

The Vice-Chairman: Thank you. Are there any questions from members?

Mr. Eakins: I would like to commend your association for a very excellent brief. I think you have brought out some very important points.

Just as a personal comment, I would like to commend the president of your association, whom I have known for many years. I feel his appointment as your president gives a great deal of status to your association, for I have known Chief Wales for many years and he is a very dedicated chief, one who has worked hard on behalf of your association and for the betterment of policing in Ontario. I am delighted to see him as the president of your association.

Chief Welsh: We concur with your remarks. As a member of the association, I couldn't agree with you more.

The Vice-Chairman: The fact that he is from Lindsay, we won't hold against him.

Mr. Eakins: No. I think that just adds to the quality a little.

Chief Welsh: No question about that, I am sure.

Mr. Eakins: I know that he has served all Ontario, and we are very proud of that fact.

I agree with you on the statement of Canadian citizenship, but what is your hiring practice at the present time as far as a person's citizenship is concerned? Do you hire people who are not Canadian citizens?

Chief Welsh: No. They must be Canadian citizens or British subjects at this time. We feel certainly there are many groups in this country today, and we can see the need for them coming on the force in time, but we certainly have to feel the police officer must be very well acquainted with our way of life, if you will, the Canadian way of life. I think it is only fair to the citizens of this province, this country, municipalities and the like, that a police officer has some idea as to what Canada is all about.

Mr. Eakins: I certainly agree. You said, "Canadian citizen or British subject." Do you mean that a British subject can be a police officer without being a Canadian citizen?

Deputy Commissioner Erskine: Yes.

Staff Superintendent Hamilton: It is in the statute, the Police Act of Ontario.

Mr. Eakins: I see. As long as you are a British subject, you don't have to be a Canadian citizen. I am thinking of the difference in voting regulations federally and provincially. To vote in a federal election you must be a Canadian citizen, but in Ontario, as long as you have been in Ontario for one year, you have full privileges of voting in an Ontario election, which I think is wrong. That is a personal opinion. But as far as becoming a police officer is concerned, as long as you are a British subject you can be a member of the force.

Chief Welsh: That is correct, but I do feel that possibly will change in time as well. I think it is very important that an individual coming on a police force should be a Canadian citizen for a minimum of three years.

Mr Eakins: I agree with you completely.

You made a very important point about not tying the hands of the police in their power of search, which I think is very important.

I don't think I have any other comments other than to say I think it is an excellent brief and you have made some very excellent points to consider.

Chief Welsh: Thank you very much.

10:40 a.m.

Mr. Lane: I would also like to commend you, sir, on the quality of the brief. What you have said there just makes darned good common sense, and I certainly would have a difficult time in arguing very much against what you have said.

I noticed in several cases where you mentioned certain sections of the bill and then after some explanation as to why, in fact you people wind up by saying the police force should be exempt from such requirements.

I realize that in your profession you want a very high standard of officer. Probably in some cases you would want a higher standard than some other professions, but it seems to me that maybe the bill should be changed so that no employer would be caught in the situation which you find yourselves caught in, rather than just excluding the police.

Chief Welsh: We have addressed it. Of course--we realize we have addressed (inaudible) view, but I could not agree more

with you because (inaudible) people in business who have to go through this kind of thing. It is as bad for them really as it is for us, but of course (inaudible) we are very concerned about the bill. As I say, I do agree with you that it should be extended and a hard look should be taken at it for all businesses, if you will.

Mr. Lane: I appreciate that certain types of businesses could accommodate the handicapped people much easier than you people could, and so on. Especially the way things are today, where it is difficult to survive in a small business, it would be unfortunate if the small businessman had to go through an extra expense and an extra hassle to hire the type of employee who he feels is going to help him stay in business and make a profit so the public can be well served.

I am just wondering, in terms of changing the bill, if we should be thinking of that kind of a change, rather than exempting certain people from--

Chief Welsh: I would hope that you ladies and gentlemen would address it in that manner.

Mr. Lane: Thank you, Mr. Chairman.

Mr. Chairman: Any other questions? Yes, Mr. Renwick.

Mr. Renwick: May I say that you have raised a number of very difficult issues with us. We will obviously have to give serious consideration to them. I have two particular ones. There are a number in the brief but I will not take up time to deal with other than two of my concerns.

The question of a pardon--I am not speaking now about provincial offenses as a record of offense, but about a criminal offense, followed by a pardon. I have assisted people in getting a pardon, and the process is a very lengthy one and involves, as I understand it, exhaustive inquiries by members of the Royal Canadian Mounted Police about the present law-abiding qualities of the person being investigated with a view to granting a pardon. I take it that even in those circumstances you do not consider that you should be prohibited from asking about the criminal record of such a person.

Chief Welsh: That is correct. As you mentioned, there is an exhaustive investigation into granting a pardon, but we see a bit of that slipping away really on the federal scene when they talk about these kinds of things. There may be a bit of an erosion getting in there where it may be far easier to get a pardon.

I believe that the present system, as you have mentioned, is really a lengthy procedure to get a pardon all right; but, again, I alluded to an incident of a person who I know of in Ottawa who had been involved in criminal activities. He had not been caught for over 10 years.

On the face of it, one would say surely this individual deserves a pardon. But he had been involved in armed holdups prior to being incarcerated a number of years ago, and he never left

that particular fraternity if you will; he kept on his association with criminals. You might say we, the police, would have to be able to prove that he had, but sometimes that is quite difficult, being on the fringe. We feel it would be in the best interests of the citizens of this country that we should be able to inquire into it.

Notwithstanding an individual who has made a mistake in life, we could not agree more, that should not be held against him for ever and a day if you will. There are individuals who would love to be in the position where they are in a police force, where certain information can be gleaned by their very association with the police force. We have concerns that way, and that is why we alluded to it.

Deputy Commissioner Erskine: I think part of that is true, Mr. Renwick, and I am sure you would appreciate the fact that, if a man has served time in jail or penitentiary for a criminal offence, he has made contact with literally hundreds of criminals who are probably still involved in criminal activity. Some of these people would make life pretty rough for him if he got on a police force, even though he may have straightened out his ways.

We do hire, as civilian employees, people who have been pardoned from criminal records and whose present activity or conduct would indicate that they are not involved with the criminal element any longer.

Mr. Renwick: A second aspect I would appreciate your comment on is related to what is now available under the code, and that is discharges even after an offence has been proven. We are all aware of them. You can have either a conditional discharge or an absolute discharge, which means that you do not have a record and you are entitled to respond on any questionnaire that you do not have a record.

Do you have any comment about that as a concern to the police?

Chief Welsh: It is a concern, because you have been convicted. Regardless of whether you get a conditional discharge or an unconditional discharge, you have been convicted; and you must then apply for a pardon even though it is a conditional discharge.

Mr. Renwick: I would not presume to argue the refinements of it, but it is my understanding that the proof has been given of the offence, the person is convicted, the registration of that conviction does not take place and the person is granted an absolute discharge. I understand you do not have to apply for a pardon, that you are entitled to simply say: "I have no record."

Chief Welsh: With respect, I think you do have to.

Mr. Renwick: Again, I don't want to argue what that process is, but I take it that you would be concerned in

circumstances such as that where a person had been granted a discharge by the court.

Chief Welsh: We would be concerned. We would like to know about it, and it may be a situation where it would not bother us at all. But I do think an applicant has to be very open and put it out on the table and say: "Here is what happened." We wouldn't not hire him because of that, not necessarily. We may very well hire him, put it through.

Mr. Renwick: I understand the distinction that you made, but the question of the discharge is one that has bothered me since I saw this original definition of record of offence as to whether it covered that question.

10:50 a.m.

In another area--and I refer to page eight of your memorandum--depending on where you sit, whether you are talking about guilt by association or you are known by the company you keep, I have some difficulty with the examples you give where you say, "It might be said to be discriminatory to discipline an officer if he associates himself with the Ku Klux Klan or to discipline a Jewish officer for joining the Jewish Defence League."

I do not pretend to know the details of either of those organizations, but there is certainly nothing unlawful at the present time about being a member of the Ku Klux Klan or of the Jewish Defence League; so they are lawful organizations. I take it there are lawful organizations, or organizations that are not unlawful, that you would discipline officers of yours for belonging to.

Chief Welsh: As you say, of course, these were examples, whether they are the best examples or not. But I think it has been raised in this House, the Ku Klux Klan and the activities they appear to be getting into, the situation in the United States with the Ku Klux Klan. I think our Attorney General has raised this in the House. We see that not only as these kind of associations, but as associating with the criminal element. We can't--

Mr. Renwick: May I just interrupt? I want to stick with the associations that are not unlawful at this time.

I share all the concerns people have expressed about the Ku Klux Klan. My problem is, I take it from what you are saying in this brief that a force, a board of police commissioners or the chief of police would be entitled to discipline an officer for belonging to an organization in Canada that is quite lawful or not unlawful.

Chief Welsh: As I say, it might be said to be discriminatory to discipline an officer. As to whether we would, if a member of my force were associated with the Ku Klux Klan, as an example, I would be quite concerned about it. From the history of the Ku Klux Klan, I would be quite concerned about it. How do we discipline? Whether it is just calling him in and speaking to

him about it and suggesting that maybe he direct his association in another area.

Deputy Commissioner Erskine: I would like to expand on that, Mr. Renwick. If the organization was not declared an illegal organization and its policy or purpose is one of not advocating violence such as the Ku Klux Klan or organizations of that type, then we would not be concerned. Our people belong to all kinds of organizations. It would depend on the intent of the organization, its creed or what it advocated.

Staff Superintendent Hamilton: Mr. Renwick, if I might even elaborate on that, under the code of offences of the Police Act there are discreditable conduct sections where a police chief has the right to discipline an officer if he feels he is associating with such as we have talked about or it could be some of the gangs that are around.

I think all we are saying here as the bottom line is that there should not be a complete prohibition against a police force to discipline a man if we know he is associating with a radical group. We should have the prerogative of at least looking at it and making our decision without going through human rights.

Mr. Renwick: I do not have any particular problem with the latter part of that paragraph which refers to disciplining an officer for associating with persons known to be involved in organized crime or to be known criminals. I do not have any difficulty with that.

I would assume that would be a precaution that would have to be taken and the discipline would only be administered in circumstances where it was warranted and where it was seen to be a discreditable form of activity of the police officer to have that association.

My first concern was, whether we like them or not, with disciplining officers because they belong to or are connected with organizations that are lawful in this society.

Chief Welsh: As you say, they are lawful; but surely you have to associate the same thing with, say, criminal activity, as the aims and objectives of a society that might be detrimental to the good of this country and to the citizens. As police chiefs, we would be concerned that our members were associating with a group whose aims and objectives are not in the best interests of our countrymen.

Mr. Renwick: I appreciate your responses to my--

Deputy Commissioner Erskine: Many of our members are members of the Blue Angels motorcycle club, a national club mostly made up of police officers. But if one of them became a member of the Hell's Angels motorcycle club, I think we would put a stop to it immediately.

The Vice-Chairman: Could I break in here? We are moving along a little in time. In fairness to the other witnesses, I

think we should try to keep at least close to schedule. There are two people at the front I want to introduce, and one of them wants to ask a brief question.

First, the member for Sarnia has joined us. He is parliamentary assistant to the Minister of Labour. Just coming to the front is Mr. George Brown, who is executive director of the Ontario Human Rights Commission.

I believe Mr. Brandt had a couple of questions he wished to ask.

Mr. Brandt: Mr. Chairman, I should like to commend the Ontario Association of Chiefs of Police for an excellent brief.

I should like to say, in response to earlier remarks that were made with respect to the present president, that I am quite pleased to say that the past president, Bob Cook, was of course the chief in my own riding. I worked with Bob for six years as a member of the commission while I was mayor.

I know the good work your organization does and I certainly commend you, as other members have already done.

In connection with the general philosophy of the Ontario Human Rights Commission, I looked through the brief to get some indication of whether, on broad philosophical grounds, there was support for a human rights commission as such or whether your criticisms, most of which I have to admit are legitimate, are taken to mean you are in some way philosophically opposed to a human rights commission.

Perhaps you could give me some response to that in regard to whether you think the commission, from your experience to date, has been a workable organization, if you have had difficulties with it in the past. The powers of search, as an example, have been inherent in the commission since its inception some years ago. From that standpoint, is there an objection on the part of the police chiefs to a human rights commission concept?

Chief Welsh: I would say categorically, no, there is no problem with a human rights commission. I feel it is a necessary thing to have such a commission. There are matters, whether police matters or--in our society today, things that have to be addressed, and the appropriate body would be a human rights commission. There is no problem with that at all.

We are concerned with this bill, though. We are very concerned, and we have addressed our concerns in this brief. We are concerned with that.

Mr. Brandt: But I am presupposing that some of your fears can be allayed through explanations or perhaps through some proposed amendments. But taken that there will be some changes, and that is why we are going through the process of the hearings, I just wanted to get a response from you with respect to the commission concept itself. I think you have given that, which I appreciate.

Chief Welsh: No problem.

11 a.m.

Mr. Wilson: May I just add to that? On behalf of the police governing authority, we support very strongly the concept of human rights legislation. We do think that, in dealing with human rights on the broad spectrum, one has to take into consideration the particular role in our society of the policeman as a peace officer. There have to be adjustments made to that.

For example, my association supports the principle that offences which have received full pardon should not be held against an individual. However, we do feel, for example, in dealing with this, each case, as far as the police force is concerned, would have to be reviewed on an individual basis.

As a police commission, we should err on putting the emphasis on protecting the rights of society as against the rights of the individual. We do not feel that a police commission can be faulted for that. But we do support the principle of the bill.

Chief Welsh: The object of the human rights commission is to protect citizens of our country against abuse or whatever. Historically, the police forces of this country and other countries as well have always tried to protect the rights of citizens. We are very much aware of the rights of citizens both in law and in general. We do support that, and we certainly support a human rights commission.

Mr. Brandt: I appreciate that. Some of the presentations we have had start off by saying they support the concept of the bill but they have certain problems with it. I did not notice that in your brief. I just want to get on record the fact you are in support of the philosophy of the human rights bill.

There is another area that there perhaps is some misunderstanding about and I would like to respond to; it is under the area of the bill that addresses essential duties as part of the job requirements.

I can appreciate what you are looking for there, but I can give you an example of a comparable kind of problem that the Ministry of Labour has, just to use our own ministry. In the area of occupational health and safety, it is not unusual for an industry to ask for or to receive an inspection and to want a clean bill of health with respect to safety in the work place.

As you can well appreciate, that safety question may be one of acceptability at that specific time, but tomorrow the conditions could change dramatically. You cannot give broad, general approval for a particular work place not knowing what is going to happen in the subsequent days to follow.

The same is true of these essential duties. It is very difficult to define in very specific detail what those duties might be, because they are evolving within your own forces. In the example you give in Ottawa, you indicated you took people

who perhaps had a substantial percentage of their time taken up with administrative detail or who could be office workers but who might be required to do field duty in the case of a riot or in the case of a demonstration.

In the approach the bill has taken, our way of describing the essential duties is simply one of you determining what the requirements are for that particular job. That is your responsibility.

For example, if an officer who was doing primarily a telephone function--and in many police forces, particularly the smaller ones, you would have a constable or whatever who would be doing that particular function--were required to do field duty, that would be an essential duty for the total job.

If a handicapped person who could not carry out in his normal performance the driving of a police car or walking a beat or other requirements that could be part and parcel of that total function, obviously he would not qualify for the position.

In a case where there is a question--and there can always be a question--the bottom line is that an investigation could be set up through a board of inquiry. That bothers you, I realize. You have pointed that out in your brief. But I am not sure how we can get around it, not knowing exactly what the parameters are of the job in question.

I used the example of the occupational health and safety area of concern, because it is also an evolving, changing situation where you could give someone a definite okay today, based on your knowledge of the situation and the specifics of it, but that could change tomorrow. The same thing could happen with respect to the job categories.

You may want to respond to that. But what I am saying is that in a commonsense approach to what essential duties are, in fact, and what would be required, there is an onus on you to provide that and to do that in a reasonable and just way. If a question came up, the board of inquiry would handle it and it is there for that purpose. But I do not know of any other way in which we can get around it which makes sense, again, dealing with some unknowns.

Perhaps you may want to elaborate on your position, having received this information from the ministry side of the question.

Chief Welsh: Of course, we get into the occupational health thing as well, and it is working very well in our force. To begin with, if an officer came to me and said, "I do not want to drive that car; it is unsafe," I would be the first one to take it off the road. I could not agree more with that kind of situation.

The occupational health thing does address these kinds of things for us. As a police administrator, you might say, "We cannot be everywhere at one time or know all that is going on." As a result of that, we are getting more and more information from the field. That is a good thing.

With reference to what you had alluded to, how do you get around to this kind of thing, I guess with great difficulty, no doubt. But here again our concern is, will everyone who comes in be saying, "I should be hired"? Do we get into a board of inquiry on every case, or can it be resolved before it gets to that?

With the budget restraints we have, this kind of thing could be a real problem. I might say it could evolve into a real can of worms, if you will, for us. On the other hand, if the investigative people took a look at the situation and saw our point of view, maybe they would understand and that would be the end of it. But in almost every case it could go to a board of inquiry, and this is a time-consuming and very costly situation. That is some of our concern.

Staff Superintendent Hamilton: Mr. Brandt, you might be in conflict here, once again, with the Police Act; section 55 outlines the duties and responsibilities of a police officer. He must do certain things. These are all his duties.

There have been cases in the past of a police officer who has become handicapped and has been put into a situation where he has been answering telephones or sitting at the office, and this is fine. But it also has been ruled that his duties are all of these duties as listed by statute.

What we are saying here is that when you say "essential duties," it could be in conflict somewhere down the road in the case of an officer who has been put into the position maybe of a police dispatcher; at that particular time, they are his essential duties. But we are saying, that is not enough; he must be able to perform all of the duties of a police officer.

As the chief stated, there could be an instance where we have to pull that fellow out and perform the other functions. So I see some inconsistency between this bill as it is drafted and the duties of a police officer as listed under the Police Act.

Mr. Brandt: I know we are running short on time, but just to respond to that: First of all, there is no problem whatever in the police force developing a short list based on the most qualified candidates. The Ontario Human Rights Commission would not in any way interfere with your very legitimate right to do that kind of thing.

Secondly, in connection with the essential duties aspect of the thing, again, as long as those duties were well defined, fair and acceptable, I can see absolutely no problem with it. You could expand those to be very inclusive, if that is what a police officer's duties were.

What we are trying to protect against is where a core job is advertised and where someone who is handicapped, as an example, applies for that job, and then there are tag-on kinds of responsibilities that obviously deny the person the right to do a rather ordinary job which becomes rather complicated, simply in an attempt to discriminate against that person from having his legitimate right to work.

11:10 a.m.

So on one end of the spectrum we are attempting to give some people protection obviously under the human rights bill, but at the other end of the spectrum I can appreciate you want a person to do an adequate job. I would think in your particular circumstances you have very well-defined and well-accepted areas of responsibility that are required of an officer. I know they would not have to be changed under this bill.

Chief Welsh: I think Deputy Erskine has something to say as well.

Deputy Commissioner Erskine: One of the areas of concern that we have, particularly in the Ontario Provincial Police--and it may affect other large forces too--is that, with budgetary constraints and no growth, we always have a long list of applicants for positions. We are in a very good position of having 10 applicants to every man we need. We are only recruiting to take care of attrition; so we do selective recruiting or selective selection. We are working out giving the applicants credit for all the attributes, education and ability, both in written and oral examinations and psychological testing.

We select what we believe to be the very best candidates out of a great long list of people we have. In that long list there are many qualified people, but they haven't as high a qualification, we believe, as the ones we select. So in each case where we don't select a man and he is qualified, are we going to have to set up a board to tell him why, or are we going to run into a time-consuming exercise to tell him why we are not hiring him?

Mr. Brandt: That can be handled and expedited in a rather simple way through a conciliation process, rather than a board of inquiry. You can go through that intermediate step without great cost or without great amounts of time being consumed.

For example, if question came up where you had two officers, one black and one white, both equally qualified, and the black officer wasn't chosen, and where a case might be made that the black potential officer felt he should be given an opportunity for the job, in that instance it could go to conciliation.

Deputy Commissioner Erskine: In the case of the selection committee that selects the officers on their qualifications from a long list of applicants, the selection committee would not know whether the man was black or white.

Mr. Brandt: That case could be made before the conciliation board, then.

Mr. Chairman: I am going to have to break in here. I have allowed this to go on well over time, because it is a fairly unique presentation and does not overlap with many other presentations we have had, but I will have to draw it to a close in fairness to the others.

Again, I thank you for your excellent brief and your presentation, and I thank you for coming out today.

Chief Welsh: We certainly thank this committee as well for having had the opportunity to appear here today.

Mr. Chairman: I ask committee members to watch the time and try to assist the chair in keeping the hearings relatively on schedule. Both yesterday morning and afternoon we did have one cancellation; so time was not a big factor. But the schedule we have set for ourselves does make it a little tight and, in fairness to all witnesses, somehow or other we will have to try to discipline ourselves to keep things at least moderately on schedule.

The next witness, from the Ontario Restaurant and Foodservices Association, is Gerald Warne.

Mr. Warne: Seeing as time is running a little bit short, we will get on with the process.

On my extreme left is Mr. Arthur Ward of Haliburton. Seeing as how we are giving the province plugs today--portions of it--he is chairman of Tourism Ontario, which is the largest employer in Ontario.

On my extreme right is Mr. Richard King of Toronto, ^{Chairman} of the industrial relations committee of the Ontario Restaurant and Foodservices Association.

On my immediate right is Mr. Douglas Needham of Toronto, who is executive director of the Ontario Restaurant and Foodservices Association.

I am Gerald Warne of Kingston, president of the Ontario Restaurant and Foodservices Association.

Mr. Chairman and members of the standing committee on resources development, it is an honour to appear before you as a spokesman for the restaurants of Ontario, an industry of 12,000 businesses employing more than 300,000 Ontario residents. Collectively we are big business, but individually we are small commercial enterprises owned and operated by all manner of races, colours, creeds, ages and sexes.

As citizens and employers, we believe in fair and equitable treatment for all, including the right to be judged on individual merit rather than group origin or affiliation. Our association endorses the new grounds of prohibited discrimination which are identified in Bill 7, with the exception of family in the case of employment. However, we strongly condemn the removal of other rights and the unprecedented powers granted under this legislation.

Bill 7 compromises some of society's basic principles, such as the right to counsel during interrogation, search and seizure only with warrant, and freedom of opinion. It is written in vague and subjective terms which place unreasonable burdens on employers with respect to understanding and fulfilling their legal

obligations. These burdens are particularly oppressive for small business, which lacks the legal counsel and management support staff that are possessed by governments and larger corporations.

We are particularly concerned about the open-ended powers given appointed officials under Bill 7. Boards of inquiry are empowered by section 38 to do anything to achieve compliance with Bill 7, a privilege that includes the imposition of affirmative action programs and hiring/training/promotion quotas. This broad power is extended further by the legalization of reverse discrimination in section 14 of Bill 7.

In our opinion, the government should prohibit, rather than condone, quotas and reverse discrimination. It is only proper that we outlaw and punish acts of discrimination, but it is not the government's role to dictate the ultimate racial or sexual composition of organizations and institutions in Ontario.

Our society is great because it has rewarded people who display the initiative to educate and apply themselves as individuals. It is regressive to change this by decree and to reward or punish individuals because of the group into which they were born. This is the kind of discrimination that a human rights code should prohibit. Bill 7 would legalize it.

This bill also fails to recognize abuses of the Human Rights Code by disgruntled individuals who register vindictive and malicious complaints as an act of revenge. Those falsely accused of infringing a right must bear extensive and humiliating investigations, while the accuser is free from the threat of penalty under this bill.

Finally, the bill treats prospective employees unfairly, because it prevents employers from specifying reasonable and bona fide qualifications on applications or invitations to apply for employment.

Our specific recommendations, in brief:

To achieve the principles of equity, dignity and equal opportunity for all, Bill 7 must be revised to:

Eliminate vague and subjective clauses that are open to a diversity of interpretation. I might just draw some reference to the essential duty discussion that took up 10 minutes. Maybe the word "essential" should be just stricken from the code, and that would make it much more clear.

Restore and ensure recognition of basic human rights such as presumed innocence, right to counsel, the right to equal treatment under the law, the right to know the allegations being made, the right to a timely resolution of charges made under this bill and protection from double jeopardy.

We should eliminate the legalization of reverse discrimination and restore the rights of citizens to be judged on their individual merits.

11:20 a.m.

Reduce the sweeping power of boards of inquiry, including the power to order anything such as the imposition of affirmative action programs, hiring, training or promotion quotas.

Reduce the arbitrary privileges given the commission, such as power of seizure without warrant, private interrogation and the exclusive power to recommend a board of inquiry.

Eliminate impractical and unnecessary restrictions on employers with respect to application forms, invitations to apply for employment, job interviews and responsibility for the actions of employees below the rank of supervisor.

Incorporate penalties to discourage complaints that are mischievous, vindictive or made in bad faith.

In the interest of brevity, rather than reading the whole brief I would like to underscore a few of the points included in the brief. I am sure members of the committee can read most of the excerpts from Bill 7 and our comments on it. With that, I am going to slip over to page five, item (b), reverse discrimination.

Section 14 simply trades one form of discrimination for another. Because an individual comes from an "advantaged group" he or she can be discriminated against in favour of someone from a "disadvantaged group." In other words, citizens lose their right to be judged as individuals and are categorized according to the racial, sexual or religious group to which they belong. Isn't this the kind of discrimination the Human Rights Code should prohibit? Must our children pay for the errors of their ancestors?

We believe every person has a right to equal treatment in employment. Hiring, training and promotion should be based on experience, education and personal abilities rather than race, creed, colour, sex, marital status, handicap or ancestry. Section 14 states otherwise.

The next items, which I don't think I will dwell on, freedom of opinion, et cetera--probably this concept is unconstitutional anyway; so there is no sense wasting your time on that. I would like to slip down to the bottom of page six, false and vindictive complaints.

Bill 7 gives complainants every opportunity to pursue a grievance and receive awards and damages, but it fails to penalize or discourage complaints that are trivial, frivolous or made in bad faith. This is a major problem under the existing code, and it should be addressed in the revised version.

As it stands, the bill encourages mischievous and vindictive complaints which are brought for the purpose of harrassing an employer. This type of conduct by a disgruntled employee is the very thing that tends to destroy the ultimate goals of the legislation in the eyes of the employers who become defensive whenever the spectre of a human rights complaint arises. Abuses of the code by complainants must be discouraged.

The next three items we touch on--fair investigation, full information and timely notification of complaints--basically are already involved in the due process of law, and I am sure other briefs have touched upon it.

I would like to touch on the double jeopardy concept on page nine that is worth mentioning because, as an employer, we will be defending ourselves on two fronts at once.

The Labour Relations Board has said it will not hear complaints under the Occupational Health and Safety Act unless the complainant first abandons his or her grievance under the relevant collective agreement.

We suggest that a similar principle be codified within Bill 7. A person should be required to elect to pursue his or her remedy either in arbitration pursuant to the terms of a collective agreement or by lodging a complaint under the code.

It is unfair to require an employer subjected to such a complaint to defend it on two fronts at the same time. It is expensive and time-consuming to the employer and to the taxpayer.

The right to know what the code means: I think Bill 7 contains highly subjective clauses that are open to a wide variety of interpretations. As a result, we foresee a number of problems related to the implementation and enforcement of the revised code.

The Legislature has an obligation to tell its citizens what their rights and their duties are in a reasonably clear manner. This is particularly the case with a human rights code, which will affect each and every one of us. To do otherwise is an infringement upon our rights.

I would like to dwell on page 10 on item (a)--unintentional and systemic discrimination--possibly because many other briefs may not touch on it, without reading sections 8 and 10. The interpretation and application of these open-ended sections raises some disturbing possibilities.

Sections 8 and 10 seem to address systemic discrimination, which occurs when an employer has established a nondiscriminatory job qualification resulting in a work force that does not reflect the demographic breakdown of society. If so, the remedy should be education and training for the disadvantaged rather than the imposition of fines and damages on employers.

Is it the intention of the Legislature to inflict hiring quotas and affirmative action programs on employers and to condone widespread reverse discrimination? Sections 8, 10, 14 and 38 give appointed officials the power to impose these practices. As citizens we demand to know if this is the intent behind these vaguely worded clauses.

We touched on essential duties earlier.

I would like to move right on to page 12, to the enforcement provisions, which we perceive to be as great a threat in this bill as any of the minor regulations.

Commission powers: We strongly object to the removal of ministerial discretion with respect to the appointment of boards of inquiry. The current legislation gives the minister, who is, after all, the only elected official involved in the complaint process, the discretion to reject the commission's request to appoint a board of inquiry. Bill 7's section 35(1) removes that discretion.

The Ontario Human Rights Commission has an advocacy role that includes the power to request a board of inquiry and the responsibility to prosecute the complaint before that board. Under this mandate, the commission cannot be considered an independent body. The minister's prerogative should be restored.

Powers of the board of inquiry: They are given extraordinary and unnecessary powers in section 38 "to direct the party to do anything that, in the opinion of the board...it ought to do to achieve compliance with the act," "direct the party to make restitution...which may include an award not exceeding \$15,000 for mental anguish," "order the removal of obstructions or provision of amenities for the handicapped" and "order the adaption of equipment or essential duties to meet the needs of the handicapped."

These powers are excessive and subject to a wide variety of interpretation by boards of inquiry. No tribunal should ever be given the power to do anything in a democratic state where the rule of law prevails. Such absolute power is open to abuse and must be limited.

The powers also duplicate or would be more properly placed in other legislation. Access and facilities for the handicapped in public places are already outlined in the Public Health Act and the Building Code. The persons drafting such legislation are usually better qualified on such matters than boards of inquiry, which quite often are chaired by law professors with no practical skills in these technical matters.

If the Legislature in its wisdom decides better access and facilities are necessary for handicapped employees, then it should make provision in those statutes rather than forcing changes on an individual, ad hoc and uncertain basis.

Awards for mental anguish: We do not understand why this bill has increased the amount that may be awarded for mental anguish threefold to \$15,000 over Bill 209, introduced by the government just a few months ago. Is there some measurable indicia of human anguish--such as the consumer price index--that has trebled in the last few months?

Once again, it is our strong belief that persons should not be exposed to double jeopardy, two actions in two forums at the same time involving the same subject of complaint. The complainant should be compelled to elect where he or she will seek relief.

The next few pages are quite self-explanatory. I would like to move on quickly in the interests of time. We will pass over employee obligations, applications, interviews, to responsibility for employee actions on page 16. Without reading section 42, I will go into our response to it.

11:30 a.m.

As employers, we accept responsibility for the actions of company officers, managers and supervisors in the course of their assigned duties. We cannot be liable, however, for acts committed by all employees or acts committed by any employee beyond the scope of their duties. In our view, the inclusion of nonmanagerial employees is unrealistic and, most important, unnecessary. As individuals, they are already subject to the provisions of the code.

Moreover, section 42 seems to hold the employer responsible for an offence, regardless of the possibility that the action was unauthorized, or even forbidden, by the employer. There is no recognition that the employee who committed the offence may have been violating company policy, or was away from the company premises or was outside company time.

Is there not some merit in enacting a provision that would give an employer a defence if the employer has taken every precaution reasonable in the circumstances to prevent the commission of the offence, as the Legislature did in section 37(2) of the Occupational Health and Safety Act? Does not such an approach encourage the taking of active steps to promote compliance?

If an employer has taken all reasonable steps to ensure compliance, and that is so found by a board of inquiry, and yet one of his employees commits a violation, surely it does not promote the interests of society to punish the employer.

We also question section 38(4), which would require employers to prevent and/or penalize harassment perpetrated by employees.

There are limits to an employer's power to discipline and discharge employees. For example, where there is a collective agreement, discipline can be implemented only for just cause, and moreover there may be mitigating circumstances, such as alcoholism on the part of the harasser, which the employer must in all fairness take into consideration.

If the employer cannot punish or control the conduct because of existing contracts or collective agreements, it is unfair to hold the employer liable for failing to penalize that conduct. Yet that is exactly what Bill 7 would have us do.

We urge the Legislature, therefore, to give serious consideration to inserting a reasonable precaution defence in Bill 7, as was incorporated in the Occupational Health and Safety Act.

I should like to move on to the conclusion now. We have put

in a dissertation here on discrimination on the basis of family, which is rather self-explanatory.

In this position paper, we have attempted to identify some of the dangers and inherent unfairness that will become law if this bill is passed in its current form.

Bill 7 threatens other basic rights and grants extraordinary powers to appointed officials. It has been drafted in rather vague and subjective terms so that the average citizen would find it difficult, if not impossible, to determine his or her rights and obligations under the law.

Bill 7 must be modified so that it will promote and protect human rights, not create an adversarial system where the accused cannot even advance the defence that "I did everything I could." We strongly recommend that Bill 7 be drafted in accordance with some of the recommendations contained in our submission.

Ladies and gentlemen, it is really not our intention to criticize the ministry or its officers who, in our experience as an association, have been dedicated and most courteous. Our quarrel really is with Bill 7 itself.

Bill 7, with one stroke of the pen, goes further to restrict legitimate business activities through additional government controls than our American friends have gone in 25 years. Fears are being expressed by some American economists and the United States administration that the American human rights program and affirmative action programs in particular have gone too far and are having a detrimental effect on the economy. They say this should be rolled back, and still we pursue Bill 7. Anything they can do, of course, we can do bigger. Anything they can give, we can give more. I do not think Ontario can afford the luxury of this philosophy, and we do not think that the Legislature has a mandate to do so.

Again, ladies and gentlemen, I thank you for your time.

The Vice-Chairman: Thank you very much. Are there any questions?

Mr. Brandt: Have your association members indicated to you any problems with the present code that you are operating under at this time?

Mr. King: No. We are really very pleased with the way the ministry and its officers are handling the present code. We are not quarrelling with the present code, except for some areas that are discussed.

Search and seizure, which are already illegitimate in the present code, we believe should be changed. But, aside from that, we believe the conduct and the approach taken by the ministry are excellent.

Mr. Brandt: That is exactly the point I wanted to raise, because many of the criticisms that are contained in your brief

are matters that are covered in the present code, the practical application of the code, and some of the concerns you are expressing as to how it may be implemented under the revisions proposed are perhaps not one and the same.

I think you are describing some concerns I would like to get into perhaps in the question period, but I guess what I am saying is, many of your concerns are already part and parcel of the existing code, which is working reasonably well. Some of the modifications you have not addressed, some of the changes in the code--

Mr. King: You are attempting to upgrade some of the features of the present code. For instance, if we look at reverse discrimination, the present code gives the ministry and the commission the right to waive some of the rules for hardship cases and problems, but the present bill engrosses everything. This is the kind of thing we are objecting to. You are going farther where it does not seem necessary.

Mr. Brandt: Not to take away from the committee members' opportunity to ask questions, let me just address one in particular that I think is well covered in the code which you raised some concerns about. That is the question of malicious complaints against an employer. What defence does he have against that?

I do not have my finger on the section, but section 31 talks about the subject matter of the complaint being trivial, frivolous, vexatious or made in bad faith or the complaint not being within the jurisdiction of the commission, and it goes on to talk about other areas where the complaint can be literally thrown out. I think it covers your specific concerns with respect to that matter.

Mr. King: No, sir. You are saying it may be thrown out. That is possible, but still frivolous complaints do occur. They are occurring under the present code, and they will continue to occur. I do not believe that you are saying a person who makes a frivolous complaint is in any way going to be punished. You are saying that an officer or the commission has the right not to carry that complaint. That is all you are saying.

Mr. Brandt: In effect, the proposed amendments in this code go further than the previous code in the direction you are suggesting, in that in the previous code it was a requirement that the commission at least hear the complaint. Under this code, the paragraph I just read, in fact the commission can throw the complaint out as being frivolous or vexatious or malicious or whatever. I think we have really gone in the direction of what you are suggesting by the amendment proposed.

Mr. King: With all due respect, sir, you can have a sexual harassment complaint that your officer in all honesty hears. The thing is false. It is vindictive. It can ruin a man's life. Many of us have wives, and it is the kind of thing that can cause many hardships.

I believe if the person made a public statement to that effect or took you to the courts, you have some method of handling this in the courts, but these frivolous and vindictive complaints--these people are protected. I agree that you have the right to refuse them, but they are still protected; they can go on and on.

Mr. Brandt: I have some other matters, Mr. Chairman, but I will let the committee members take their turns.

Mr. Riddell: I want to commend you for a brief which I heartily endorse. I happen to think if the founders of this country and the people who fought for the freedom of this country ever knew that we were putting in rights that have supremacy over what I consider basic rights that they actually fought for, they would turn over in their graves.

When I see we are laying down legislation to tell businessmen who they can hire, who they cannot hire and who they cannot fire--I have a businessman in my own area who finds it in his best interest or in the best interest of the community to hire females to operate his little store, and yet some male can come along and put him before the human rights commission because he failed to hire him--I just have to wonder where in the hell are some of the rights of these people who have come up the hard way and have got a business going.

I really commend you on your brief. It is something I am almost tempted to send out to my businessmen to let them know somebody is damned well fighting for them.

11:40 a.m.

Mr. Eakins: I just want to echo the concerns expressed by my colleague. I want to say that, having been actively involved as a tourism critic in the Legislature, I take very seriously the brief which you have presented, because you represent one of the largest industries in Ontario, perhaps, as we refer to you, as part of the second largest industry. I know you are about an \$8-billion, if not more now, industry to this province. I know that your concerns are legitimate. Many of the things you have expressed I certainly support.

Especially in the hiring practices, I think an industry such as yours certainly should be allowed to run your industry and to operate with the diversity you require to give people the atmosphere and service they deserve.

One area, which I think you are mainly concerned with, has to do with the power of the Ontario Human Rights Commission. I must say I support you on that, because it would give the commission greater power than our Ombudsman in Ontario. Certainly I will have more to say on that later.

Would you suggest that is perhaps one of the major complaints you have with the bill, the power of the human rights commission, that it is "shall" instead of "may," as far as the

minister is concerned, and I think the minister, in my opinion, should have that discretion?

Mr. Warne: Unfortunately, to reply to that, too often the retort to this kind of criticism is, "Yes, we have always have that power; we have never used it." But I am not sure too many people here have read the constitution of the Union of Soviet Socialist Republics. I had occasion to see it translated into English some years ago, and in two or three paragraphs I thought I was reading the constitution of the United States of America: the freedom of opinion, freedom of religious expression, thou shalt not be spirited away in the middle of the night except with a warrant in due process of law, et cetera.

I say to you gentlemen, there is a constitution that is written with all the greatest intent but can be perverted and subverted. Certainly we have had very responsible government and responsible people in our government, be it the leaders or the civil servants, and that does not preclude that some day the successors may not have that same sense of responsibility and that this power they have may overwhelm them.

We know the old cliché about power corrupts and absolute power corrupts absolutely. I feel, if we are talking about rights, this is the time to restrict the abuse of that power for the rights of the individual in Ontario. I would say that is probably the most onerous provision of the bill as it is drafted.

The other things are a lot of vague interpretations in trying to be extremely broad and selective. It is difficult, I understand, to write legislation. I have had no experience with it, but I see the tremendous problems the body would have had in trying to come up with something that is fair and equitable and to be specific. It must be very difficult.

Mr. Havrot: I would like to congratulate your association on an excellent brief. Being a small businessman most of my life, I realize the problems a businessman has in running his own business, let alone have to put up with the harassment that could occur as a result of, say, false and vindictive complaints. I feel here that the individual who is launching the complaint should be warned before he launches that complaint that he would be liable for the costs incurred.

That would be a major deterrent. In many cases, where frivolous complaints come in, they should be charged with the costs, because in too many cases they say, "It is not going to cost the employer anything." But the person who is, through the commission, or who comes in, is getting paid by the commission, but you are not getting paid for the time you lose in defending yourself.

It is costing you money not only in the operation of your business but also in defending the challenge that has been put forth before you. So I strongly feel, with frivolous and false and vindictive complaints, that the person who is laying that complaint should be told beforehand he would be subjected to the costs incurred if he loses.

This might deter a lot of these frivolous and false complaints that may occur to a small businessman. I feel a small businessman could be harassed to no end, and business is bad enough today without having to put up with additional burdens on the shoulders of the small businessman. I congratulate you again on an excellent submission.

The Vice-Chairman: Any other questions? Thank you very much, and I think you can sense from the committee that you have been well received.

Mr. Warne: Thank you very much.

The Vice-Chairman: The third witness today is the Canadian Organization of Small Business; Geoffrey Hale, Ontario policy director.

I would like to compliment the committee on the brief and direct questions to the last group. I hope we can keep that up whenever we find ourselves in a pinch, although I do appreciate there are times when it is difficult to keep on schedule.

Mr. Hale: Mr. Chairman and members of the committee, the Canadian Organization of Small Business welcomes this opportunity to express its views and concerns on the subject of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario, to the standing committee on resources development of this Legislature.

We believe the committee has an important role to play in advancing the cause of human rights, not the least of which is the opportunity to define and clarify certain sections of this legislation in order to promote a greater degree of fairness and consistency in its administration.

For those of you who are not familiar with our organization, the Canadian Organization of Small Business was founded in August 1979 by business owner-managers and professionals who saw the need for a national organization that would serve as an effective force for protecting the interests of small business and independent professionals and promoting the principles of responsible individual enterprise.

It serves as an ombudsman for its members in their dealings with public and private sector bureaucracies alike, helping individual members to cope with the complexities of modern government. One of our roles is to help parts of government where the right hand and the left hand may often not be in very good communication.

Often there is a tremendous gap between policies as they are proposed or dictated from senior levels of government and the rank and file of civil servants who deal with the public. Sometimes the good ideas or good intentions of senior government officials do not filter through to the grass roots. Part of our effort is directed at harmonizing these differences.

Now more than two years old, COSB represents more than 4,000 owner-managed firms and independent professionals, about 1,700 of

them in Ontario. Its membership consists of retail and service businesses, manufacturers, professionals, construction firms and many other kinds of businesses. Eighty-five per cent of COSB's members have fewer than 20 employees and 97 per cent fewer than 100 employees. Therefore, you can see that we represent a good cross-section of the businesses and professionals in this country.

Our organization shares the commitment of Ontarians to the principles that underlie the human rights act, the dignity and worth of the individual and the equality of all individuals before God and the law.

In such instances as individuals are unable to overcome discrimination and harassment under grounds prohibited by the act, we believe it is appropriate that they should have recourse to an impartial agency of the government that can hear the facts of the case, determine fairly and impartially the wrongs that may or may not have been suffered, and offer redress to those who have been unfairly treated within the bounds of the act.

11:50 a.m.

However, COSB is concerned that the sweeping language of certain sections of this legislation and the vagueness of other parts of the act may well be interpreted in such a way as to undermine these basic principles, whatever the good intentions of the drafters of the act and the members of this committee.

Just as no criminal act can be excused in a court of law on the grounds that the defendant may have meant well, so the good intentions of the members of this committee will avail for nothing if a lack of precision in the wording of this act is allowed to lead to abuses of human rights in the name of human rights.

In this submission to the committee, COSB will address its major concerns in the fields of civil liberties, employment and the employer's right to define both the terms and qualifications of employment within the spirit of the act, the need for compensation in the case of trivial or harassment complaints against innocent persons, affirmative action and reverse discrimination, the responsibilities of employers and landlords as third parties to a dispute under this act and the composition and power of boards of inquiry, and the potential for unnecessary over regulation stemming from these and other sections of the act.

I don't know what your time framework is, Mr. Chairman. We have at least 20 proposals dealing with sections of the act, and I will not read the brief that you have before you but rather refer to certain sections that are of greatest concern to us.

First, in the area of civil liberties: COSB is concerned that certain sections of this act could be interpreted in such a fashion as to permit the invasion or setting aside of a number of basic, commonly accepted civil liberties unless significant changes are made in the wording of the act.

You have all heard comments, no doubt, on section 12 as it deals with possible infringements of freedom of speech. We have a

bill of rights in Canada, we have a charter of human rights and freedoms which has been proposed at the federal level, which all parties of this Legislature, and indeed the provincial government most emphatically have endorsed and promoted in spite of some political discussion to the contrary.

It seems to us incongruous that all parties in this Legislature would be promoting the charter of rights and freedoms at the same time as they are paying lipservice to human rights through this legislation and then including a section such as section 12 in the bill.

Recently a member of the Ontario Human Rights Commission sent letters to newspapers, radio stations, television stations around the province urging them not to give coverage to certain kinds of organizations which we may have very little use for but which still are protected under this principle of freedom of speech until such time as they break the laws of this country.

I have spoken to a number of editors, managers of radio stations, people who are themselves independent business people. Their response was that they felt this was not a proper exercise of the moral authority of the commission in what they viewed as an attempt to dictate the contents of legitimate publications under the act.

They felt that, under section 23 of this act, should a complaint be laid against them under section 12 for covering, say, the Ku Klux Klan and allegedly promoting the ideas of the Ku Klux Klan--although I very much doubt there are many newspapermen in the province who would do that--they could have all government advertising withdrawn from their newspapers or their radio stations. That is a tremendous power with tremendous potential for abuse. We don't think it should be in this act.

Section 9, the definition of harassment as engaging in a course of vexatious comment or conduct: In the absence of a precise definition of the extent to which a particular course of conduct must be pursued to be considered vexatious, and the degree of responsibility of the complainant to make this fact known to the respondent, this section could result in a field day for litigants.

You have all heard suggestions of the kinds of frivolous complaints that could be made under this section; and we believe that, while the section has a valid place in the act, a greater degree of precision is required in its wording.

The right of entry and search without warrant under section 30(3) has been dealt with at great length by others appearing before this commission. We would support the call made by a number of groups to amend this section to conform with the present legal requirements for search warrants.

We feel that it is rather incongruous that the Ontario Human Rights Commission has powers over and above those even enjoyed by our police forces in pursuing criminals. The average Ontarian is not a criminal and does not want to be treated like a criminal on

the whim of an embittered employee or a member of the human rights commission or its staff.

Section 30(3)(c) provides for the commission to remove any evidence or documents that it may consider relevant to its investigation and to return them promptly to the person who produced or furnished them. The word "promptly" is a very open-ended thing. An accountant may promise to return your books promptly at the end of the fiscal year and take two months to get around to making up your financial statements and return your books.

This is a major problem that many small businesspeople have. Many government departments are not known for the speed with which they process matters dealing with small businesspeople. We would urge that a specific time frame be laid out in the legislation and that, given the modern photocopying and printing capacities that are enjoyed in this government, three business days is a reasonable period of time for documents to be held for copying or the making of extracts.

The right to legal counsel under section 30(3)(d): It is our understanding that the original intent of this subsection was to permit employees of the commission to exclude people whose presence was unwelcome to a person being questioned by them during an investigation. All well and good. We would suggest, however, that this section may be interpreted in such a way, in the absence of words to the contrary, as to exclude legal counsel, members of families, or, in the case of people who do not speak English too well, interpreters.

We would suggest that the section be amended to permit any person who is not objected to by the person being questioned to be present at questioning by employees of the commission.

Section 8 and section 13 give us some cause for concern as well. The sweeping and imprecise wording of these sections, that no person shall infringe or do anything that results directly or indirectly in the infringement of a right under this act, is an invitation to the abuse of civil liberties and the basic principles of common law. It is almost as if individuals charged with a complaint under the act are being required to prove themselves innocent of the charges against them, rather than the crown being required to prove them guilty.

I think the presumption of innocence is something that this society cannot dispense with, if we are to maintain a proper balance in law and in power between the individual and the state, regardless of the good motivations of the people who are promoting this section.

We have a number of concerns also as regards sections of the act that define the terms and conditions of employment. Section 4(1) states that every person has a right to equal treatment in employment without discrimination because of race, ancestry, sex and all the other qualifications laid out in this act. We support that section. We believe that it is an important principle on which our society ought to be based.

However, in certain cases, the absolute application of this section to applications for employment may lead to difficulties that were not originally foreseen by the persons who drafted this act but which may occur regardless.

12 noon

The definition of record of offences applies to persons who have committed provincial offences or offences in respect of which pardon has been granted under the federal Criminal Records Act. We agree with the provision as it applies to pardons for federal offences. However, the section dealing with provincial offences we believe needs certain amendments.

The act's absolute wording in this matter gives rise to the concern that this section may be applied in such a way as to require employers to choose between complaints of discrimination and costly charges of negligence should the person be hired and then relapse into criminal behaviour.

The best example that might come to mind is that of somebody who applies for work with a trucking company, or taxi company, or courier company, in which he has to do a lot of driving as a major condition of his employment. If that person has a string of driving convictions, especially drunk driving convictions, who in his right mind would put that person behind the wheel of a car or truck as a matter of right?

COSB recommends that this section be amended to require persons found guilty of an offence under any provincial enactment to avoid any recurrence of the offence for a period of not less than three years after the expiration of the original penalty. This would give a clear indication that potential employees and tenants have passed a probationary period and are less likely to abuse their responsibilities.

COSB further recommends that the committee ask the Minister of Labour to enact regulations establishing reasonable grounds for the consideration of a record of offences in determining bona fide qualifications for employment or accommodation following detailed consultation with representatives of the private sector and other interested parties.

We believe that there are certain sections which simply cannot be dealt with through a broad sweep in legislation and that certain qualifications are necessary if this right is not to be used to the extreme prejudice and disadvantage of the average, law-abiding, well-intentioned citizen of Ontario.

COSB wholeheartedly endorses the inclusion of handicapped persons within the Human Rights Code and shares the commitment to creating a climate of equal opportunity for them in employment and other areas of life so that they can live as an integrated, self-respecting group of individuals within society. COSB supports all reasonable steps to promote an improvement of public attitudes towards the handicapped and their evaluation on the basis of their individual abilities, aptitudes and character, rather than that of outdated stereotypes.

However, the terms used in the definition of handicapped in section 9(b) and the qualifications for the employment of the handicapped required under section 16, and orders of boards of inquiry for modification of premises under section 38 are sufficiently varied that they do not give adequate guidelines to employers as to the requirements and consequences of the act. They leave employees completely at the discretion of employees of the human rights commission and at the discretion of the decisions of boards of inquiry.

We recommend that the committee recommend to the Minister of Labour that these sections be suspended pending the drafting of more specific regulations governing their application and that these regulations be drawn up with the co-operation of representatives of the private sector and organizations of handicapped persons, the purpose of which would be to determine such areas as essential duties and essential qualifications in employment, and the definitions of undue hardship, which we will deal with in a later section of the brief.

Section 22 on employment interviews has given us some cause for concern as well. The wording of the section is somewhat vague, but it could be implied--and this has not been contradicted by members or representatives of the Ontario Human Rights Commission to whom we have spoken--that this section could be used to require employers who have received a great many applications for individual job vacancies to provide personal job interviews to all persons applying for a position.

Imagine, if you will, the person who puts out an ad for a job and receives 200 responses. Is that person supposed to interview 200 people if he is just looking for one individual? Normally, employers will draw up a short list of people who seem to have the most extensive qualifications for the job. That short list will be based upon a written résumé or other information that is voluntarily supplied by the job applicants.

In the case of handicapped persons, most of the time they are not going to tell you about their handicap if they write or telephone in for a job. On that basis, how is the employer supposed to have discriminated against them if he doesn't know about their handicap before not giving them an interview? This seems to us to be a catch-22 situation.

COSB recommends that employers be permitted to establish a short list for interviewing purposes in cases where a substantial number of applications are received for one available position. In these cases they should not be subject to contravening the act.

Other groups appearing before this committee have referred to the need for protection from and compensation for the costs incurred as a result of vexatious, vindictive, and malicious complaints.

In the field of human rights as in any other area of the system of justice, justice must not only be done, it must be seen to be done. It must apply equally to all parties in a dispute, whether the dispute is between a large corporation and an

individual largely without means or between a small business or a landlord and the enormous power of the state.

The frequency with which trivial or harrassment complaints are made against employers under the present act has given our members much cause for concern. I spoke with a gentleman in Guelph last week who had been subjected to two frivolous complaints from the same individual in a matter of months. Employees of the Ontario Human Rights Commission had investigated the complaint thoroughly and determined both times that the application was frivolous.

That employer estimated the cost--without having to go before the full commission at all--simply in his personal time, that of members of his staff, and other employers who were questioned, at \$7,500 for those two complaints. That young man is still on staff there. The employer commented to me, "I'll make him a useful member of this team if it kills me," but it's a horrible price to pay because somebody has an inferiority complex.

If the commission and its mandate, and that is to say the very nature of government involvement in the protection of individual rights and freedoms, are to be respected by Ontarians, the government and this committee must guard against the temptation to confer upon the commission and its employees the status of a relationships police or a thought police.

Under section 31 the commission may refuse to deal with complaints or subject matter that is trivial, frivolous, vexatious or made in bad faith. Discussions with representatives of the commission, members of our organization and the general public indicate that this right is indeed exercised from time to time, though not without considerable inconvenience sometimes to those against whom the complaint has been lodged. However, the members of the commission are fallible, their employees are fallible, and despite their best efforts and best intentions, frivolous or malicious complaints may get through the screening devices that are used to prevent them from going too far.

Under the act as presently written, neither the commission nor a board of inquiry established by the minister has the power to award costs to a respondent who has been exonerated of all charges against him or her. Bearing in mind that under sections 38 and 41 a respondent may be fined up to \$40,000 in constructive damages and awards for mental anguish, this very fact may be a disincentive to individuals or companies charged under the act to defend themselves from false, frivolous or malicious complaints.

There is a heck of a downside risk there. If you stand up for your rights you could have the book thrown at you and incur a lot out of pocket costs doing it. We find that a lot of small employers will knuckle under to that kind of unfortunate situation simply because they don't have the time or the money to stand up for their rights. Yet in these cases the complainants may have their full costs paid by the taxpayer in order to protect their human rights.

This is not equal justice under law. It provides

irresponsible persons with a legal club with which they may harrass persons who have offended them for any reason with virtual impunity.

12:10 p.m.

If a person were to lay a frivolous suit in a court of law, or send their local police and fire departments on a wild goose chase after some imagined fire or crime, they could be assessed court and legal costs or charged with public mischief. There should be a deterrent within this act to prevent irresponsible individuals from engaging in public mischief, financed by taxpayers' money under the auspices of the Human Rights Code.

We would suggest that this kind of award could take two forms: First of all, an award at the discretion of the commission at the expense of the complainant to make up out of pocket costs resulting from time out of work or legal and accounting costs. But if a plaintiff in the judgement of the commission or board of inquiry, should be found incapable of discharging all or part of this sum during a specified time period, we believe that there should be a special compensation fund similar to the criminal injuries compensation board established to help compensate victims of this kind of harassment for the costs incurred in defending themselves.

The question of affirmative action is a touchy one at the best of times. Our organization recognizes that certain groups in Canadian society may for a time suffer relative economic and social deprivation as a result of the inability of their members for whatever reason to take advantage of the opportunities for education, career advancement and economic achievement that many of us take for granted.

We believe that the state may be able to encourage the efforts of individuals to break out of patterns of deprivation or overcome social, economic and cultural barriers to opportunity. This is already being done in many areas through training support programs, employment incentives, educational programs and many other programs.

These programs have in common the fact that they provide assistance to individuals who are willing to make the effort and they do not have a coercive character. They are not implemented at the expense of the people who are supposed to provide them with these opportunities rather they provide them with an incentive to provide these opportunities.

However, we are concerned that by promoting the concept of group rights at the expense of individual rights, governments may change the concepts of affirmative action from that of removing artificial barriers to employment and career advancement by means of education incentives to a coercive system relying on numerical quotas, guidelines or targets which have nothing to do with individual merit. In fact, they are a negation of the principle of merit in employment.

COSB is aware of the protests and promises that the Ontario

government will never impose systems with numerical quotas or targets on employers as remedies for alleged discrimination. We regret that there is nothing in this act which would give that promise the force of law.

Rather than going into our concerns about section 14, affirmative action, at length at this time, perhaps we will await any questions that you may have at a later time. However, we would stress that this section would tend to undermine individual rights and the principle of merit in employment, if interpreted in any way similar to the programs initiated and pursued with such vigour in the United States.

To do so, to use employment quotas as a means of creating equal opportunity or rather an equality of results by statistical groupings, would be to deprive some individuals of their right to equal treatment in employment or accommodation because of their race, sex, national origin or other superficial characteristics. In a word, reverse discrimination. We believe that such an outcome would be a perversion of the intent of this act and would inevitably result in a loss of respect for the law and for those who enforce it.

We recommend therefore, that section 14 be amended to categorically exclude the possibility of the commission promoting reverse discrimination in employment through the use of numerical targets, guidelines or quotas in promoting the hiring and career advancement of members of protected groups under the act.

The question of third party responsibility dealing with sections 38 and 42 is also one that gives us concern. Without going into this question in great detail at this time, we believe that most employers will do their level best to prevent employees from mistreating one another, infringing on one another's human rights. In most cases, where they are not capable under their own authority or under collective agreement of doing that a request for sanctions by the commission is not going to do a great deal either.

We request that employers' responsibility be limited to the actions of supervisory officials in the direct performance of their duties and take account of any policies that may be laid down by the company to prevent discrimination in the work place.

The composition and powers of boards of inquiry are also a matter of concern for us. We believe that the minister should have the right to appoint a board of inquiry at his discretion, rather than this right being limited to the human rights commission. This would be one way of screening out the further pursuit of frivolous or malicious complaints. We believe the boards of inquiry should be set up in much the same fashion as grievance arbitration boards under a collective agreement.

If you are asking somebody to determine what the essential qualifications for hiring should be or what the essential requirements of a job are, you do not want somebody to be making that decision who does not have the foggiest idea how your business operates. We would suggest that boards of inquiry be

composed, as are many grievance arbitration boards, by the designee of the respondent in the case, the designee of the human rights commission or the plaintiff as the case may be, and a mutually acceptable chairman who may be judged impartial and capable of making competent judgements under the act.

We also recommend under section 38(3) that the minister draft regulations to precisely define questions of undue hardship as they relate to structural modifications which may be required to permit access by the handicapped. We recommend that these regulations exclude businesses with fewer than five years in business from the application of this section on the grounds that these businesses very often occupy outdated premises which would cost a great deal to modify. They also have the worst survival record of any set of businesses. We do not think it is reasonable that survival rate should be made any worse.

We believe it should exclude businesses with fewer than 20 employees if they are in a net deficit position. If companies already owe their creditors more than they have in assets, it is quite likely that any extensive modifications to their premises would put them in an even worse financial position.

We recommend that businesses that have suffered at least two consecutive years of financial losses also be excluded; and that in cases other than the above, the board of inquiry consult with the bank manager of the business and other appropriate financial advisers to determine whether the expenditures required by the board's order would place undue strains on the firm's financial and credit positions.

In conclusion, COSB appreciates the opportunity to have appeared before this committee to express our concerns that the human rights act be framed in such a way as to avoid infringements of civil liberties in the name of human rights and to prevent, wherever possible, the unnecessary increases in regulation and administrative complexity that are so often an unwitting byproduct of such legislation.

In discussions with representatives of the Ministry of Labour and the human rights commission, we were informed that the interpretation perceived upon reading and rereading this legislation was not the actual intent of the bill. Unfortunately, unless the actual intentions of the government and Legislature of Ontario are clearly articulated in the actual wording of the act, they may count for relatively little in the actual implementation and administration of the act. We therefore urge the Minister of Labour to review and redraft the proposed act, taking into consideration our comments on these specific areas of Bill 7.

The Vice-Chairman: Are there any questions from the committee? I guess that's it.

12:20 p.m.

Thank you very much for your presentation. Again a number of the comments that you have raised and your concerns have been talked about by the two earlier presenters this morning. I know we

have received a number of them previously and a number of us share many of the concerns you have stated. I think we feel some of your concerns Mr. Brandt clarified earlier, but certainly they go under continued review.

Thank you very much for the time and the obvious effort that you have put into preparing and presenting on this brief.

Mr. Hale: Thank you very much, Mr. Chairman.

The Vice-Chairman: The last witness this morning is Parent Finders Incorporated and I believe the spokesman for the group is Mr. Edward Mercer, vice-president.

Has everyone received a copy of this brief? Okay, sir, you can start any time.

Mr. Mercer: I would like first to introduce Mrs. Mary Jane Brinkos, who is president of Parent Finders Incorporated. This morning is the first time that Mrs. Brinkos and I have had a meeting of minds and I think I can be satisfied in saying that we have a consensus.

Mr. Chairman and honourable members of the standing committee on resources development, we represent Parent Finders Incorporated, which is a volunteer, nonprofit, nonfunded organization with a program of search for all members of the adoption triangle--the adoptees, birth families and adoptive families. Our membership consists of adult adoptees, fostered adults, birth families, adoptive parents and concerned individuals. The Parent Finders organization is incorporated under Ontario law.

Since Bill 7 is An Act to revise and extend Protection of Human Rights in Ontario, the Parent Finders organization has a prime interest and concern in representing the interests of all those persons directly involved in the adoption process in Ontario.

The matter of human rights is a complex one and this fairly evident in the proposals set forth in the bill. It would seem that if we do no more than identify and clarify human rights, we are able to stand on firm ground. Once we arbitrate, qualify, quantify and compartmentalize these rights, the ground seems less stable.

Within the proposed Bill 7 are 11 paragraphs dealing with the various examples of discrimination to be prohibited. The 11 paragraphs have been enumerated on the face of this brief. Parent Finders wishes to speak specifically to three of the prohibited areas; namely, ancestry, age and family.

In our view the word "ancestry" looks in one direction only. It protects the person from his or her forebears and is probably meant here in terms of racial origin. If so, it would seem more appropriate to change the wording to race, racial origin, et cetera. If "blood relationship" were used instead of "ancestry," the legislation would permit the matter to be considered in both directions. The child would be protected from discrimination for

reasons of his antecedents. The senior would be protected from discrimination for reasons of his descendants.

With reference to the use of the word "age," the suggested shift from the present prohibited discrimination in the 40 to 65 age range to the 18 to 65 age range is certainly an improvement. However, age designations appear to be discriminatory in themselves and run counter to the idea of no discrimination on the basis of age.

If juniors, intermediates or seniors need protection from discrimination or exploitation, such protection should be independently spelled out. Age is a basic ingredient in Bill 7, and in the proposed federal charter of rights to the constitution. It is important that we do not contravene either of these proposed statutes.

Use of the word "family" in the list of prohibited grounds of discrimination is a bit unclear and it is difficult to understand what purpose it serves. Does the word "parents" encompass any relatives, such as grandparents, uncles, aunts, brothers, sisters, cousins or other relatives or guardians? We suggest that "blood relationship" better fulfils the requirement as in the case of ancestor above.

In part II, headed "Interpretation and Application," under 9(j) Parent Finders is concerned with the exemption applied to government services, such as "a levy, fee or tax imposed or authorized by law." Perhaps this is because we are misinterpreting the intent of this exception to the rule. However, there is apparent here some inference that either discrimination is not possible in the dispensing of levies, fees or taxes, or else the government does not have sufficient confidence in the proposed legislation to adapt it within the public service. We feel that governments should comply with their own legislation and ask that this committee address itself to this matter.

Human rights is about human conduct and interpersonal relations. Our organization supports completely and absolutely the principles outlined in the preamble, dealing with the inherent and inalienable rights of individuals. In fact, human rights, including adoptees' rights, is what Parent Finders is all about.

If we were to make one single suggestion relative to the preamble, it would be to replace the United Nations' phrase "Universal Declaration of Human Rights" with our own Ontario declaration of universal human rights.

We appreciate the opportunity that has been afforded to us to present our views to this committee. We hope our participation has been fruitful, and welcome any questions you may have.

I have prepared a brief that I would wish to convey to you personally, and Mrs. Brinkos has one as well. We have not had the opportunity to have it prepared in this manner. It is quite possible that we can provide copies of what I wish to present, but it is in the nature of an application of this particular written brief, and it may help to clarify a bit as well.

The directors of Parent Finders Incorporated appreciate the efforts of Mr. Richardson, clerk of the committee, in finding this time slot for us, and welcome this opportunity--this is somewhat redundant.

Dr. Elgie, as Minister of Labour, and his staff, along with this committee, have responded to an exceptional legislative challenge; namely, to tie in human rights with rules for the marketplace.

Allowing for this, we feel that Bill 7 has evolved remarkably well, and is a well-intentioned document. Notwithstanding the ministry's success in blending these elements, we feel it is all the same wearing two hats. If you will pardon this judgement call, the ministry may agree with us, or even go further and say it is wearing more than two bonnets.

12:30 p.m.

Parent Finders agrees with Dr. Elgie that Bill 7 represents progress and to that end we are anxious to see it succeed. As noted in our written brief, human rights are priority number one with our organization and section 44(2) which provides that this act takes precedence over other acts tends to support our position.

Monthly meetings of Parent Finders deal with problems that arise from the adoption process and groups such as ours in all jurisdictions of Canada and the United States entertain the many concerns of adoptees.

The deepest and most prevalent concern across the continent is the achieving of open records. In England, Scotland, Israel and some states in the United States, records are opened for adult adoptees. In Finland, records are opened for citizens of all ages. In many parts of the world, such a thing as sealed records is unheard of. In Canada and in parts of the United States, vital statistics and child welfare acts as we in Ontario know them are products of the past 60 years.

On May 28, 29 and 30 of this year, Mrs. Brinkos, three other Ontarians and I attended the American adoption congress held in Kansas City, Kansas. Mrs. Brinkos gave the concluding address on that occasion. The general consensus from the congress was that the new wave adoption program of the past 60 years, locked in as it has been with sealed records, has reaped the whirlwind. Leaders of the movement to break the stranglehold of closed records are psychiatrists, psychologists, paediatricians and social workers.

Reference under section 3 of Bill 7 deals with contractual arrangements. In contracts in Ontario dealing with the relinquishing or adoption of a child, the signatures of judges and birth or adoptive parents are attached. The principal participant, the child, is not a signatory to these contracts and, in effect, is not considered to have any contractual rights. The child's presence, independent representation or written consent play little if any part in most cases of adoption. The record has to be

one of the most flagrant violations of human rights either here in Ontario or elsewhere.

How does this issue relate to Bill 7? It relates in general terms to the points developed in our written brief. Specifically, and I refer to the fee factors described in part two under section 9(j) as an exception, the fee authorized by law in the case of the Vital Statistics Act is improper and discriminatory, as it denies vital information to the adopted child, information freely available to foster and other children.

The question of discrimination on grounds of handicap has special meaning for adoptees. Latent or recessive diseases of the blood can pose a serious health threat to adoptees denied access to the medical history of their birth families. Huntington's disease, sickle cell anaemia, are examples of such blood-related diseases.

Currently, the attention of Americans is being directed to the case of Jim George of Kansas City, Missouri, a victim of chronic myelocytic leukemia. His one hope is sealed within his birth records. A blood relative, if known, could provide him with the bone marrow necessary for his survival. Two actions in the Missouri Supreme Court have partially unsealed the records.

Jim George's fight to stay alive points up the moral dilemma in the adoption process and challenges the concept of sealed records. Section 9(j), part II of Bill 7, has to be reviewed most carefully. One can no longer expect exceptions or exemptions to human rights to be viable in today's society.

I would like to turn the remainder over to Mrs. Brinkos.

Mrs. Brinkos: Mr. Chairman and members of the committee, Mr. Mercer has summed up the position of Parent Finders very well, but I have one question that I would like to ask the committee, specifically dealing with part V, section 44(2): "Where a provision in an act or regulation purports to require or authorize conduct that is a contravention of part I, this act applies and prevails unless the act or regulations specifically provide that it is to apply notwithstanding this act."

Then it goes on to say that within two years, other acts may be excluded from this act or may override this act. On what basis are you going to decide which acts may be excluded from the human rights act?

The Vice-Chairman: Unfortunately, Mr. Brandt just stepped out for a telephone call. Do you wish to comment on that?

Mr. Brown: No.

The Vice-Chairman: I believe Mr. Brandt is coming back and I do not feel that I am really in a position to make a statement on that at this time. If Mr. Brandt is not back in time before we close off here, he can meet with you privately and possibly make some statement in that area.

Mr. R. F. Johnston: Mr. Chairman, the committee will not be making that kind of decision.

Mrs. Brinkos: I am sorry?

Mr. R. F. Johnston: The committee will not be making that kind of decision. That would be made by the various ministers and ministries. They would then be bringing forward, in cabinet I presume, the arguments for exclusions. That will be after this committee stage is completed.

Mr. Renwick: Once your request has been on the record, I am certain that Mr. Brandt will give some consideration to it and will be in touch with you about it. I do not think there is any problem that way.

Mr. R. F. Johnston: Your questions have been raised by others in terms of what is the tendency going to be. Is it going to be to try to exclude other acts or is it going to be to generally try to accommodate? Yesterday, Mr. Brandt indicated the attempt would be to have all other bills accommodated within this bill and not to be attempting to find exclusions. But he will answer more fully later.

Mr. Mercer: This is a matter of reservations that are held in respect to future legislation and it is a bit difficult for anyone to decide this point at this juncture. I think Mrs. Brinkos has in mind the fact that perhaps the government has some idea of the nature of some reservations which might apply here. She is interested in knowing what these possibly might be.

The Vice-Chairman: Any questions from any of the committee members? Thank you very much for your presentation and coming to meet with us here today. We appreciate your efforts.

Mr. Mercer: We reciprocate. We thank you very much.

The Vice-Chairman: This will adjourn this portion and we will be back here again at two o'clock.

The committee recessed at 12:39 p.m.

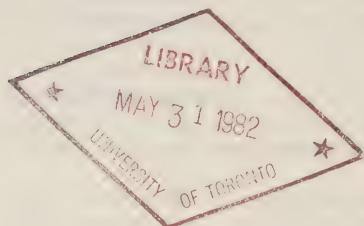
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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

THE HUMAN RIGHTS CODE

WEDNESDAY, SEPTEMBER 9, 1981

Afternoon sitting

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Clerk: Richardson, A.

Research Officer: Madisso, M.

From the Ministry of Labour:
Brandt, A. S., Parliamentary Assistant

Witnesses:

From the Canadian Daily Newspaper Publishers Association:
Baird, K. A., CDNPA Ontario Government Affairs Committee
Co-ordinator; Publisher, Kitchener-Waterloo Record
Hamilton, F. G., Legal Counsel; Hicks, Morley, Hamilton, Stewart,
Storie
Wilson, E. P., Chairman, CDNPA Government Affairs Committee;
Publisher, The Sun Times, Owen Sound

From the Canadian Life and Health Insurance Association Inc.:
Bier, G., Group Planning Executive, Mutual Life Canada; Chairman
of Committee

Black, C., Vice-President, Health Insurance
Burns, P., Executive Vice-President, Confederation Life

From the Canadian National Institute for the Blind:
Herie, E., Executive Director
Irvine, C., Board Member
Pellman, P., Board Member; Barrister and Solicitor
Robinson, J., Board Member

From the University of Windsor:
Adam, B. D., Sociologist, Department of Sociology and Anthropology
Minton, H., Psychologist, Department of Sociology and Anthropology

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, September 9, 1981

The committee resumed at 2:09 p.m. in room No. 151.

THE HUMAN RIGHTS CODE
(continued)

Resuming consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario.

Mr. Chairman: I recognize a quorum. The first group before us is the Canadian National Institute for the Blind. We thank you very much for being on time. This committee always starts on time.

I am not sure who is speaking--Paul Pellman. Paul, maybe you could introduce the people with you for Hansard?

Mr. Pellman: Miss Robinson will be doing that.

Mr. Chairman: Okay.

Miss Robinson: Good afternoon, Mr. Chairman, members of the committee and ladies and gentlemen. My name is Joan Robinson. I am a librarian and I am also a board member of the Ontario division of the Canadian National Institute for the Blind, as well as chairman for the public education and advocacy committee.

Let me introduce you to my colleagues. To my right is Paul Pellman, a lawyer and also a board member. At the far end of the table is Euclid Herie, executive director of the Ontario division of the CNIB. Right next to me is Cathy Irvine and she will be assisting us this afternoon.

Mr. Chairman, I would like to provide you with a copy of our brief. I would like to refer to the brief so could you open it to page three where it deals with discrimination. I assumed you do not read Braille.

Mr. Chairman: No, I am sorry I do not. Maybe I will have to brush up on it. I might surprise you some day.

Miss Robinson: Under these circumstances I think that we should be able to make a reasonable accommodation to you and to the members of the committee by providing print copies of the brief.

We appreciate this opportunity to make a public presentation on our position concerning Bill 7. We have been active participants in the Coalition on Human Rights for Handicapped in Ontario and support their recommendations which were presented to you on June 9 and which have been compiled in a brief that was submitted at that time.

Our contribution, however, is to try and represent a specific constituency. Their concerns are not unlike those that are represented in the coalition report. After reviewing the bill now before you, we would like to indicate that we support the policies and intentions as set forth. We wish to endorse the well considered and highly appropriate position that has been taken which is of course important during this international year.

We wish to extend our congratulations particularly to Dr. Elgie and to both opposition parties who have promoted and supported this policy.

Our concerns however, are with the particular wording of this document. We wish to be able to secure the human rights of visually disabled people in Ontario.

An individual who is confronted with a visual disability is also confronted with the challenge of having to adapt to the specific visual limitations that are inherent in his or her disability.

Under the terms of present legislation, this means that someone who is visually disabled cannot see what an average person sees at 20 feet. So it is significantly limited considering that here is an individual who can probably see 2,200 feet. There are all kinds of specific distinctions under those terms from someone who can cope quite well with magnification aids and read print, to someone who has no light perception at all or significantly limited fields so that the perception that they do have is restricted.

An individual must become independent, self-reliant, confident, competitive. In order to achieve this goal they must be willing and able to seek the rehabilitation services that he or she requires. These are most often seen in terms of library services, adjustment to blindness, mobility training, social services, any number of services. The Canadian National Institute for the Blind and many other organizations are able to provide these.

Assuming that the individual is able to meet this challenge, to adapt to his or her disability, is able to seek training, so that they may be able to pursue gainful employment, the individual is still confronted with the greatest obstacle that his disability may present and that is the obstacle of public opinion and attitude. This most commonly manifests itself in the form of discrimination and misunderstanding which creates a barrier to the individual's full integration.

Most commonly a person who is blind is confronted with this type of discrimination when he or she is seeking employment, goods and services, seeking to use public facilities, seeking housing, education, employment.

Consider just for a moment what you would do under specific circumstances which I will detail now. I would like to present you with a series of case studies which may broaden your understanding that someone who is visually disabled confronts.

For instance, place yourself in the position of a man who is possibly 18, who has just graduated from the W. Ross Macdonald School for the Blind, who is using a guide dog and who is travelling by bus to Toronto where he wishes to seek employment and accommodation. For the time being, he will be staying with relatives when he arrives in Toronto. Someone assists him to acquire a cab so he can go to his destination and the cab driver refuses to take him because of his dog. The cab driver allows no animals in his cab and is afraid the dog will shed hair and so on, and make a mess of his cab.

Consider the circumstance of a young woman who is seeking a place to live. She finds an apartment which is close to where she works but is refused accommodation because the landlady feels the woman will have difficulty using the stairs in the winter, that she may be more prone to accident, that she may be a fire hazard because she will not be able to see the burners on her stove, for instance.

Consider the situation of a young man who is an executive, who earns \$50,000 a year, represents an association, who applies for disability and life insurance. Insurers feel this individual is a high risk and they will not insure him.

Consider the situation of a young woman who has just graduated from the school of social work at the University of Toronto, who has placed well in her class and who wants to be employed, is looking for work and is refused several times because the employer feels she will not be able to handle the case load, she will not be able to write reports and to go through the high amount of material that she must be able to read.

Consider a young woman who is a dictatypist, who has worked for CNIB but wishes to broaden her employment experience. She types at a high rate, goes to an employment agency and requests they take her on as a client. They refuse because they feel she will be unable to do all the tasks in the job description for a dictatypist.

My concern in presenting these case studies is to indicate that the present wording of the bill now being reviewed is not tight enough to protect the human rights of my constituents, and that we would like to guarantee the rights of visually disabled people in Ontario.

I urge and appeal to you as legislators to review the brief that has been presented by the Coalition on Human Rights for Handicapped in Ontario to endorse and include the recommendations made by this group so that visually disabled people in Ontario can enjoy full and productive lives.

At this point, I should like to turn the discussion over to Paul Pellman who will be reviewing the technical wording of the bill now before you.

2:20 p.m.

Mr. Pellman: Mr. Chairman, ladies and gentlemen, this

afternoon I am going to deal specifically with parts I and II of Bill 7 in terms of possible amendments the CNIB is suggesting should be made. To begin and to reiterate what Miss Robinson has said, CNIB is in agreement with the philosophy of this act and the intent of it. Unfortunately, we suggest that the wording is such that the function or the purpose the government wished to be carried out may not be carried out in this act because of certain wording difficulties.

What I wish to emphasize today is, in part I with respect to freedom from discrimination, the exclusion of the words "equal access to," which means equal opportunity. We suggest this should be noted in the bill itself. With respect to part II, that there be an inclusion of the term "reasonable accommodation," definitions of the term, regulations relating to the defence, which would be undue financial hardship.

What I am going to do today is go through the brief we have presented to you and in particular point to where we feel the legislation is not complete yet. I would suggest that the changes we are putting forward are not that major in wording alone, but in content are extremely major. Without a provision for reasonable accommodation and equal access this bill, I suggest, has very little impact and will have very little effect on the way disabled people are being treated.

At the beginning I should note that this bill is not an affirmative action bill. It is not a bill meant to provide handicapped people with jobs. It is a bill meant to provide handicapped people with an even shot with everybody else with their nondisabled peers.

We have taken a quote from Harold Krents, who was the inspiration for Butterflies are Free, and put it on the second page of the brief. I think he notes very appropriately that no one should be employed because he or she is handicapped. Incompetence is not a disability. However, neither should a person be denied employment simply because he or she is disabled. Maybe this is a good place to begin.

In its preamble, the act notes that it is an act "to provide for equal rights and opportunities without discrimination." I suggest the words "equal rights and opportunities" are extremely important. In sections 1, 2, 3, 4, and 5 we have all of the protection provided in the area of services, accommodation, harassment, contract employment, vocational associations.

I suggest the one amendment that should be made to each of those sections is that after the words "equal treatment," there should also be included "and equal access to." Let me explain why. It may seem to many people that we are really saying the same thing, that the words "equal treatment" will cover it.

But let us go to the Concise Oxford Dictionary and see their definition. They use the word "treatment" relating to equal treatment as being with respect to treating people in the customary way, the same way. The example would be given of the blind person who comes for a job. The employer says: "Great. Here

is the application. Fill it out." The blind person cannot fill out the application because he cannot read it. He is being treated in the customary way but he is at a disadvantage.

We suggest the wording "equal access to" is much more appropriate because "access" is defined as people being able to compete on an equal level. In that instance, "equal access to" would mean the blind person comes in and the employer would then say: "Well, he is blind. I guess I had better read it." Or in the example of the Ontario government which may employ more and more disabled people over time, possibly having the form in Braille.

It is a difficult concept to grasp because over the years we have introduced new human rights legislation. We have the Family Law Reform Act which looks at equality in marriage, so we have equality in the races, equality in the sexes. This is a slightly different situation.

I want to quote at this time from a decision of the Supreme Court of Washington in the United States, a decision of Holland versus the Boeing company in 1978. It really touches on why treating people the same is discrimination. It reads:

"Legislation dealing with equality of sex or race was premised on the belief that there were no inherent differences between the general public and those persons in the suspect class. The guarantee of equal employment opportunities for the physically handicapped, though, is far more complex.

"The physically disabled employee is clearly different from the nonhandicapped employee owing to the disability, but the difference is a disadvantage only when the work environment fails to take into account the unique characteristics of the handicapped person. Identical treatment may be a source of discrimination whereas different treatment may eliminate discrimination against the handicapped and open the door for employment opportunities." On that particular point I suggest that there be a slight amendment to have the words "equal access to."

As a matter of fact, the Ontario government itself in a memorandum sent around to all the deputy ministers, dated March 17, 1980, signed by Mr. Waldrum of the Civil Service Commission, discussed employment of the handicapped. In the first paragraph it reads as follows:

"The main thrust of our employment program for the handicapped is to ensure that every handicapped candidate seeking employment in the Ontario public service is given fair and equal opportunity to compete with nonhandicapped candidates."

Fair and equal opportunity--I suggest the best way that can be covered under the act is not to merely put equal treatment, but to add the words "equal access to."

Hand in hand with that particular suggestion, as it relates to part II of the act, is that you can't have equal access unless you legislate some form of reasonable accommodation.

If you look at the brief presented by the CNIB we have in it

a few sections--I think it is in part IV--that relate to the costs of reasonable accommodation. Many of us think that reasonable accommodation will involve knocking down buildings, tearing down staircases and putting in elevators and a fairly heavy financial burden. I suggest that is not the case. In a minute I will refer you to some of the examples in the United States where it was found that reasonable accommodation is not in itself extremely expensive or very expensive. Therefore, recommendations one to five relate to the wording "equal access" being added.

With respect to the issue of reasonable accommodation the handicapped person or the visually impaired person will be unable to compete on this equal level if there is not some provision for reasonable accommodation being made. The difference between affirmative action and reasonable accommodation is basically this: We are not saying legislate affirmative action. We are saying that employers and other such persons providing services should be under an obligation to consider the disabilities of that person, consider whether reasonable accommodation can be made and then judge that person.

Basically that means if both a handicapped and a nonhandicapped person came in and the employer thought of the reasonable accommodations that could be made like a Braille machine for instance, and then after that still decided that the nondisabled person is far more qualified, he would hire the nondisabled person and that would not be discrimination. But if he does not even give that person a chance to compete equally with some reasonable accommodation, I suggest that is discrimination.

On page four of the CNIB's brief we refer under letters A to K to exactly what are the different styles of reasonable accommodation in terms of shifting the desk, shifting hours, changing assignments of tasks, and things of that nature. A good example is probably a factory worker who is legally blind. He has tunnel vision, very slight vision and some light perception and he is requesting of the employer that he only work during the daytime because at night with it being fairly dark his vision is even less. Reasonable accommodation would be made by shifting his hours so that he would only work during the daytime and not at night.

The concept of reasonable accommodation is not really that new. It has been in existence in the United States through their Rehabilitation Act, 1973, in the regulations placed in it. Reasonable accommodation is always dictated by one major factor and that is business necessity, financial costs.

2:30 p.m.

With respect to legislating business necessity and financial cost, I suggest that be placed in the regulations. This is one area where the CNIB may be of assistance in terms of assisting the government regarding what particular accommodations might be appropriate in a particular case. CNIB has an expertise in the area of serving blind persons over the years.

Therefore, we come to our recommendation six which relates to the fact that in section 9(c) the definition of discrimination

should include that it is presumed reasonable accommodation has been made for the handicapped person. That does not mean that reasonable accommodation must be made. That would be affirmative action. What it is saying is that the employer or the person providing the service must cast his or her mind to the issue of reasonable accommodation before he or she considers the merits of the two or three people competing for the job.

What goes hand in hand with this definition to include reasonable accommodation would be in the definition of "equal" in section 9(e). "Equal" would also include reasonable accommodation and benefits. Benefits relate to insurance benefits.

On the point of insurance very briefly: There is a section of our brief which is entitled "The Handicapped Employee--An Insurance Risk?" I would hope that my friends from the insurance companies today will be able to address themselves to that particular issue.

So we are suggesting that the definition of "equal" be expanded to include accommodations and benefits.

In section 9 there should be a definition of reasonable accommodation which we have on page six of our brief and which notes at the bottom of that section that you have reasonable accommodation provided it does not cause undue financial hardship. They struggled with this in the United States. They set down regulations. There have been case decisions on point. Certainly, undue financial hardship is going to depend on the size of the business, the number of people employed, their net revenues, their net expenses, things of that nature.

Finally, with respect to section 9, I would suggest that the definition of services be amended. The definition of services in the act in many ways is what I would call a negative definition. It says what services do not include. We suggest it should say what services may include; that is, without limiting the generality of the foregoing. It is not an exhaustive definition. What we are suggesting on page seven of our brief is that services be defined to include things such as education, recreation, communication, entertainment and transportation. This is most important, especially with respect to education, because this act deals with persons between the ages of 18 and 65.

The new Education Act that has been proposed which will legislate some very large changes in terms of special education and integration covers people up to age 18; that's fine. We do not mean to get the two acts confused, but Bill 7 relates to people after age 18. A very important part of a person's education is often post-secondary education, at community colleges and universities. That is why I feel it is so important that the word "education" be combined in the definition of services, so that our educational institutions are covered under this act as they are in the United States.

We then go on to section 10 of the act which relates to constructive discrimination and the defence of reasonableness or bona fides. I would suggest that there are two forms of what would

be considered bona fide reasons. The first is where a person genuinely or sincerely believes in good faith; they have a bona fide reason for believing that this person cannot do the job. Not to criticize that person, but unfortunately much of the discrimination that we see nowadays is from people who have good faith or genuinely believe.

Unfortunately, they are uneducated in the area of the capabilities of certain disabled persons. It is not like they intentionally mean to be discriminating; it is just that with the knowledge they have they say: "Gee, I have a law office and I need someone to do some dictatyping. A blind dictatypist? You have to be kidding." The IBM company has now come out with a dicta machine which is an oral machine so that errors can be corrected.

Again, in good faith, the employer felt sincerely: "A blind person a dictatypist? Not a chance in the world." I suggest that the definition of bona fides should be in a sense boned up a little. And the other definition of bona fides is that it is a valid reason having an objective basis in reality or in fact.

I suggest that that can be set out in the regulations; that an objective basis is really what the bona fides defence should be all about, because, if you have it as being believing genuinely or in good faith, any employer can come up and say, "Hey, look, I've got nothing against this blind guy working in my factory, but jeese, I don't think they can do this kind of work." I suggest that the bona fides defence should be much more objective.

I am not proposing any particular wording to be redrafted to this committee in section 10, but I am merely noting that I think it has to be tightened up a little.

With respect to section 16, which is also one of the defence sections, relating to where a person is incapable of performing the essential duties attending the exercise of the right, that incapableness must include the wording "with reasonable accommodation." It must. If you do not include it, then you have really dropped reasonable accommodation. If you do not have reasonable accommodation in it, then disabled persons cannot compete equally, and that is the purpose of this bill.

With respect to the issue of the costs of reasonable accommodation, we were talking a little bit about undue financial hardship, and I would suggest that in section 36 of the bill that talks about how the hearing is to be conducted, I suggest with respect to the defence of undue financial hardship, the onus must rest with the employer, not the prospective employee. In a decision in Ontario, Singh versus Security and Investigation Services, Professor Cummings gave the decision; and I think he notes very appropriately on page eight of our brief on whom the onus should be in these proceedings, in terms of the defences being pleaded.

He notes that placing the onus on the employer to prove undue financial hardship on his business is a very sensible approach. The employer is in the best position to understand and explain why his hiring practices are dependent on the operation of

his business. Such an explanation may involve detailed facets of the employer's business organization known only to the employer. The prospective employee may know so little about the overall structure of the business that it may only be possible for him to make out a prima facie case of discrimination.

To require the victim of discrimination to prove in detail that there would be no unfair inconvenience placed on the employer by hiring him is to assume that the prospective employee is in a position to know the intricate details of the prospective employer's management policies; and that goes on.

After that, CNIB recommends in number 12, that is on page nine, a section which notes the onus of proof that should be added to section 36. Basically what it notes is that a prima facie case of discrimination must first be made out. Then it is up to the employer, the person infringing that right, to come forward and say: "Well, look, very properly here is why we can't cope and hire this particular person. We are a small business. We only employ four people. The equipment that would be required would cost \$5,000 or \$6,000. We don't know the abilities of this person. Usually in this position--it is a factory job--the turnover rate is very high. To invest \$5,000 in this employee isn't really worth it." Fine. It may make sense in the circumstances, but I suggest that onus rests with the employer.

Finally, I wish to make reference to section 39, which is appeals from the board of inquiry to the Supreme Court. It is funny that the group of people, such as the CNIB, who have asked for this legislation should ever be arguing in front of this committee to limit the legislation, but I am in this section. I am asking that you limit the litigation involved by noting that appeals to the Supreme Court should only be involved in questions of jurisdiction or areas of law, not an overall right of appeal.

What I fear here is the employer's being in a much better position to litigate, and thus, if they lose at the board of inquiry level, litigating all their cases to the Supreme Court, and in fact litigating the handicapped person to death, who may not be able to afford the cost of the appeal.

Those are the specific recommendations. Page 10 notes some of the costs of reasonable accommodation and some of the American examples are set forward--International Telephone and Telegraph and Sears, Roebuck and Company.

2:40 p.m.

Probably the best study that has been done in this area is set out on page 11. It is a study done by Lawrence, Johnson and Associates. It was done through the Office of Civil Rights in the United States. It notes some of the costs involved and it was a study of 271 businesses. It notes how small the costs of reasonable accommodation in fact were.

The summary of it says that the analysis of the costs of accommodating handicapped employees is as follows: First it is evident that, based on 271 examples of reasonable accommodation,

cost is not a prohibitive factor in most instances. It is only in a few examples where the cost is substantial. This of course would be covered under the defence of undue financial hardship.

The last section of our brief is section V which sets out how the CNIB can be of assistance to the government both in setting out regulations and setting down criteria for reasonable accommodation. At this point I thank the committee for hearing me out and I will pass things over to Mr. Herie, our executive director.

Mr. Herie: Mr. Chairman and members of the committee I think it's appropriate for me to thank Paul and Joan, our volunteers, who have taken time from their work to be here this afternoon to so ably have prepared and presented the CNIB's position on this very important legislation. We certainly have high hopes and expectations. As Paul said, there is nothing substantive that I can add to the legalese which is important that he has presented which I am sure the committee will study in some depth.

I do feel that the CNIB in Ontario is in a very strong position, based on our more than 60 years of experience in work with and for the blind, to be of help either to this committee, to the government, to the Ontario Human Rights Commission in the application of the legislation. We can be available to consult with employers on cost and to provide knowledgeable and trained staff virtually in every part of this province as we have been doing and continue to do. We have 20 offices, as you may know, Mr. Chairman, outside of Toronto, from Timmins to Cornwall, Thunder Bay and as far as Windsor and throughout the province and in varying degrees we have adequate staff to properly assist.

I think the examples that I will just touch on are reasonable accommodation. It need not create a lot of worry for some employers. A good illustration is the IBM audiotyping unit that Paul referred to, which is really a miraculous thing because it enables the typist to underline, to read a whole page of typing back, to hear errors and to make corrections. At the time that IBM marketed this during the International Year of Disabled Persons, and they were getting ready for this, they came to CNIB and I was personally involved in co-ordinating the work that we did in Braille and taping the manuals of instruction. We did that for a very nominal fee to IBM.

What it did is enable the IBM people to market in a regular way to any employer who wanted to instal first the word processing, and if they happened to hire a visually impaired typist, to help the staff there to train this individual. CNIB's involvement ended when we did the special formatting of the material and for ever more until the equipment changes, the reasonable accommodation has been achieved.

I think another example deals with a situation in a plant where between two yellow lines a vehicle--let's say a front-end loader--would have access and no one walks between those lines except at their peril. What it really means in reasonable accommodation is that the union and management get together and

they say, "We will agree that anyone carrying a white cane will be given priority right of way on the floor of the plant." That is a reasonable accommodation that costs absolutely nothing.

As a last example, Mr. Chairman, I am always in my experience struck by the fact that, particularly home makers and others who are not just in the field of gainful employment, find it more difficult to get access to certain aids. I think the person who needs to read a baby formula needs the same access to a closed-circuit television reader that enlarges print as might someone in the work place.

So we must consider all of the people and we work with more than 13,000 people in Ontario. We do not work with them all at once and not with every one of them. But at varying times in the life of a blind person, their needs change, depending on age, circumstances, family supports and so on.

The aids, which are changing--there must be hundreds of them out now--most of them are not costly. They would range anywhere between \$10 to maybe \$200. Yes, there are some that do cost into the thousands, but not the hundreds of thousands of dollars, maybe \$4,000, \$2,000. In some cases, like IBM or other forms of Braille computer embossers that may cost up to \$20,000, they have perhaps a higher price tag.

But I think there is no need for alarm and no hesitation that if this bill can be strengthened in the way that we recommended, we have from our experience every confidence that it is perfectly workable and you may be assured of the continuing support of our organization through our staff and volunteers. So thank you very much.

Mr. Chairman: Thank you very much Joan, Paul and Euclid. Any questions the committee members may have?

Mr. Brandt: I would like to commend the organization for an excellent brief that was considerably different from some that we have heard this morning on some of the very same points that you have hit on. I think that perhaps, speaking from the standpoint of the Ministry of Labour, develops a little balance into what the intent of the bill is.

Playing the role of the devil's advocate just for a moment if I may, there were some comments made this morning with respect to the very last point that you touched on where reasonable accommodation would have to be made to provide for the needs of the handicapped in the work place as an example. There was a concern expressed--a valid concern I might add--in connection with marginal business operations, the smaller business people.

There were a number of recommendations that they made and I would like to just quickly go through them and get your response to them because you did not have the opportunity of hearing their remarks in this connection.

They suggested that there could be undue hardship on a small business and they were looking for exemptions for these

categories: Businesses with fewer than five years in operation; excluding businesses with fewer than 20 employees; if they are in a net deficit position, excluding businesses that have suffered at least two consecutive years of financial losses. In cases other than the above, require a board of inquiry to consult with the bank manager of the business and other financial advisers to determine whether in fact the business would be in a position to carry out structural changes or whatever else might be necessary.

The question I have is, in your view would those kinds of recommendations be reasonable? Do you think they are workable in the context of what you are attempting to achieve and the very valid and legitimate concerns of some business people who have looked at the phraseology in the bill which they consider to be rather vague, open ended and may cause them undue hardship?

We are trying to find a balance between the two positions that is reasonable I think and I would just like your response to that if I could get it please.

Mr. Pellman: With respect to those four criteria. The first one, fewer than five years. I think I would agree with that in principle but I am wondering if it would be less, such as three years. The second one is fewer than 20 people. I would disagree with that one. I would suggest businesses that have fewer than five people possibly, but businesses that have six or seven people may be doing or may be billing out in a year possibly \$300,000 to \$400,000 of business. For that reason I suggest that they should be included. Fewer than 20 is too loose a criterion.

As a matter of fact, in the United States, in their Rehabilitation Act, I believe if you get a grant from the federal government of over \$2,500 you have to comply; \$2,500 is very, very low.

2:50 p.m.

The first criterion should be two or three years; fewer than 20; I would suggest fewer than five. Net deficit makes some sense. I also think, though, that net deficit should be included as saying net deficit for the past two or three consecutive years. That would combine the two of them. In certain businesses, for tax reasons, they may write off a huge loss in one year in order to cover themselves for future gains or a large gain that has just been made. The net deficit in that year worries me a little bit. Net deficit for several consecutive years would be appropriate.

Mr. Eaton: Why the numbers criterion at all? I do not think numbers, whether it is five or 20, would mean anything. It is the profitability of the business whether you can do it or not.

Mr. Pellman: Yes. Very true.

Mr. Herie: Mr. Chairman, if I could just--I would just like to add one small comment to what Mr. Pellman has said. In my experience over a number of years as a disabled person and in advocating in a number of situations, sometimes there is a tendency to think that, because the disabled are fairly large in

numbers, relatively speaking, if something like this is introduced and is all of a sudden available, there are going to be horrendous numbers of people unleashed on society in a sense.

Obviously, that would not happen and is not happening. It certainly would not threaten the fabric of viable business or any other aspect of our society.

Secondly, it is a fact that discrimination is something the disabled have put up with and we continue to. It is fair to submit that it is going to take some time, first of all, even to allow disabled people to be self-informed, if you like, about the availability of rights. By the time the person had the opportunity to implement some of these rights, in many cases, a lot of other accommodations will have been made. Some of these criteria that are submitted are perhaps, I would suggest, a tilting at windmills.

Mr. J. M. Johnson: I have one question. Perhaps it would be related more to the next group which is making a presentation, the Canadian Life and Health Insurance Association Incorporated.

You mention on page 13, in relation to Du Pont with respect to insurance, no increase. Some of the former handicapped groups have suggested there is an insurance differential to people who do have a physical handicap, or a handicap of some sort. Have you experienced this problem or is it a problem?

Mr. Herie: The subject of insurance and the disabled is, indeed, a complex one. Yes, I would say that there has been a differential in a number of circumstances and, in fact, outright cases of discrimination.

For example, as a blind person, I was refused life insurance. When I did receive it, I was not entitled to get, say, double accident indemnity. I travel extensively and statistically the mortality rate is probably better for blind people, as a group, than it is for society as a whole if one really examined that topic.

The experience in terms of premiums for long-term disability or other types of insurance, it may well be that the risk is somewhat greater in that there can be compounding bonuses. For example, blindness and diabetes often go together. I think that would be a fair comment.

On the other hand, I was employed in a child welfare agency in western Canada which had 200 employees. I also served on some trustee benefit programs with the United Way. In looking at all of the groups, I, as a blind person among 200 people certainly never added to the risk of that group. In fact, it was the people who suffered from other illnesses relating to alcohol abuse, accident or heart disease who were probably greater risks to the plan than were--in fact, there were two blind people in that agency at one time.

In my experience, I would be hard pressed to find examples of where hiring a disabled person is going to affect materially the risk to an overall group. There is always the corollary of

pre-existing conditions which, in my view, should be an adequate safeguard.

Mr. J. M. Johnson: Possibly we could follow that one up with the next group.

Mr. Chairman: Thank you very much for your fine presentation today and for the copy which, I agree, I do have difficulty--I hope it is not a job application for me. I think it helps to make your point.

The Canadian Life and Health Insurance Association is next; Mr. Patrick Burns.

Mr. Burns: Thank you, Mr. Chairman. My name is Patrick Burns. I am with Confederation Life Insurance Company and also a director of the Canadian Life and Health Insurance Association.

With me this afternoon is Mr. Charles Black, who is a senior staff member of the association, and Mr. Glenn Bier, of the Mutual Assurance Company of Canada in Waterloo and also active in the association's work.

I believe we have furnished the clerk of the committee with copies of our submission and we are hopeful that we can highlight the items of that submission and also answer any questions that any members of the committee might have. It is obvious from the previous presentation that you probably have some for us which we will be pleased to answer.

First, just a little background on the association. It was formed at the beginning of this year, but it is not a new association in that it is the successor of two previously separate operations: the Canadian Life Insurance Association and the Canadian Association of Accident and Sickness Insurers. The association's membership includes 125 insurance companies that would represent 99 per cent of the life and health insurance in force in Canada. Our members also have been selected as administrators of 70 per cent of the employee pension plans that are in effect in Canada covering, however, just 13 per cent of the members overall in Canada in such plans.

Our member companies offer a wide variety of insurance plans that provide benefits in the event of loss of income caused as the result of disability, death or retirement, as well as benefits for medical and dental expenses resulting from accidental injury or from sickness. A partial list of the benefits available would include: life insurance, pensions and annuities, disability income insurance on a weekly or monthly basis, what is called extended health-care benefits--benefits that reimburse or cover the cost of health-care goods and services not covered by the provincial plans; for example, drugs, prostheses--group dental expense insurance, accidental death and dismemberment benefits, and waiver of premiums under an insurance policy which falls due during the period of total disability.

Marketed to individuals or, on a group basis, to employees of a specified employer or association of employers, to members of

a specified union or collective bargaining unit, or to borrowers from a specified lending institution or to members of other organizations or associations, such benefits are an important component of Canada's total income security system.

A major area of concern to us is the concept of risk classification because insurance is, by its nature, a risk-sharing system. The risks of mortality and morbidity which are shared under life and health insurance contracts vary significantly from individual to individual based on such personal characteristics as age, sex, occupation and health condition.

3 p.m.

A fundamental principle which is vital to the successful operation of a voluntary insurance program is that such variations in risk must be recognized in the pricing or in the benefit structure or both. That is, that equal risks should be treated equally but unequal risks should not be treated equally.

This concept of risk classification was discussed at some length during the hearings into life insurance by the select committee on company law in 1979, also to some extent in the parallel hearings in the select committee study of accident-sickness insurance in 1980. A copy of that portion of the association's submission to the select committee is attached as an appendix to provide additional detail regarding our views on classification of risk.

The association strongly endorses legislation protecting human rights of all persons but believes that it is essential that such legislation take into account the risk classification aspects of the insurance process and not create unintended barriers to the provision of life and health insurance to Canadians.

We believe these aspects have been recognized in current legislation in Ontario and in the legislation now before you but we do wish to review certain details of the proposed legislation. I would now ask Mr. Bier to take us through some of our concerns.

Mr. Bier: Mr. Chairman, members of the committee, continuing with our presentation I would like to touch on some of the existing legislation as it applies to this issue. The current Ontario Human Rights Code prohibits discrimination in any term or condition of employment, including the provisions of an employee superannuation or pension fund or an employee insurance plan.

Certain features of such benefit plans were studied in detail by a task force before this aspect of the code was proclaimed in force and regulations were issued under the Employment Standards Act, 1974, to recognize these features and to clarify the application of this legislation to such plans. We believe this approach has worked well and are not aware of any current problems in this area.

The operations of insurance companies are regulated primarily by the Insurance Act which includes, under sections 388 and 389, the prohibition of "any unfair discrimination between

individuals of the same class and of the same expectation of life" and, "any unfair discrimination in any rate or schedule of rates between risks in Ontario of essentially the same physical hazards in the same territorial classification." Again, we believe that the provisions of the Insurance Act provide effective protective to residents of Ontario with respect to insurance.

Moving to pending legislation, Bill 7 proposes several major changes in the Ontario Human Rights Code. Those which have greatest significance for members of our association are:

1. The extension of the circumstances in which discrimination is prohibited to include, (a) discrimination in the equal enjoyment of goods, services and facilities generally and, (b) discrimination in contracts, and;

2. The extension of the prohibited grounds of discrimination to include handicap.

As already indicated, we believe that the proposed legislation attempts to recognize certain aspects of the insurance process and that it would not create major impediments to the provision of life and health insurance to residents of Ontario. However, we do wish to comment on several provisions of the bill and to suggest certain modifications.

As currently worded, section 20 provides that the right to contract on equal terms is not infringed when an insurance contract differentiates on both bona fide and reasonable grounds because of age, sex, marital status, family or handicap. This section recognizes that some differentiation on the specified grounds is necessary for the functioning of the insurance system but also recognizes that insurers should not have the freedom to differentiate arbitrarily. We support that view.

Since the provision of insurance is regarded as a service, we believe that this section should be extended to provide that the right under section 1 to equal treatment in the enjoyment of services, goods and facilities is similarly not infringed. We also believe that this section should apply to all contracts of life and health insurance, whether issued to cover a specific individual, to cover members of a family unit, to cover employees of a specified employer, to cover members of a specified collective bargaining unit, to cover borrowers of a specified lending institution, to cover members of a professional association, et cetera.

In view of the complexity of the risk classification procedures used in life and health insurance, we feel that the responsibility for supervision of those procedures should be carried out under the Insurance Act and by insurance department officials, where responsibility rests for supervision of other aspects of insurance company operations.

One suggestion to accomplish that result and to clarify the standards for risk classification was included in our presentation to the select committee on company law, and there is reference to page 39 as well as appendix 10 of this appendix.

With these changes, section 20 would read as follows: "The right under section 1 to equal treatment in the enjoyment of services, goods and facilities and the right, under section 3, to contract on equal terms without discrimination because of age, sex, marital status, family or handicap, are not infringed where an application for or a contract of automobile, life, accident or sickness insurance or a life annuity complies with the Insurance Act and the regulations thereunder."

Mr. Black: Thank you, Mr. Chairman and members of the committee.

I should like to turn now to subsection 21(2), and here we have stated what we feel is the intent of this section, namely that it is intended to ensure that employment could not be denied or made conditional simply because of the provision of an employee benefit plan.

Our association endorses that concept and agrees that the terms of the employee benefit plan should not present a barrier to employment, or stated otherwise, that the employment benefit plan should not dictate the decision regarding employment.

On the other hand, we do not believe that this subsection was intended to prohibit a fairly common practice, that is, an employer who requires enrolment in an employee benefit plan by all employees who meet the eligibility conditions; and we urge that the wording be reviewed to clarify this distinction.

Turning to subsection 21(3), this subsection provides some limited flexibility with respect to employee benefit plans on the basis of handicap. Many handicaps do not represent materially increased risks of mortality or morbidity, but certain conditions do. I really cannot stress this point too strongly. Many handicaps do not present increased risks, but certain conditions which fall within the broad definition contained in the proposed legislation, and particularly progressive conditions with an unfavourable prognosis, do substantially increase these risks.

The recognition of these increased risks as expressed in this subsection will facilitate efforts to increase employment opportunities for the handicapped, we believe, without creating a disincentive for the provision of employee benefit programs. Such increases in risk in these special situations can be very significant for both life insurance and disability insurance plans, and thus we recommend that the reference in this subsection to employee disability plan or benefit, be changed to read "employee disability or life insurance plan or benefit," so that the two types of benefits are treated in the same way.

Subsection 21(3)(b) recognizes the special impact which additional cost can have on an optional employee-pay-all benefits and on programs involving a small number of employees. With respect to the latter point, we urge that the wording be modified to clarify that the limitation of 25 employees refers to the number of employees who are eligible for the benefit program rather than to the total number of employees, since such programs are often offered separately to employees in specified locations or specified employment categories.

3:10 p.m.

There are two other fundamental principles of group insurance involving the evaluation of health condition either directly or indirectly. These are:

(a) The "actively-at-work" principle which provides that insurance coverage or an increase in coverage does not become effective until the first day on which the employee is actively at work following the introduction of the coverage, and;

(b) The requirement that evidence of insurability be submitted by late entrants; that is, by employees who do not enrol for coverage when first eligible to do so, but who subsequently apply for coverage.

While these two principles apply to all employees, whether handicapped or not, we suggest that clarification be provided that the operation of these principles is not viewed as an infringement of the right to equal treatment in employment.

Subsection 21(4) introduces a new concept of equivalent compensation when an employee is excluded from a benefit plan because of handicap. We believe that such exclusions will be infrequent and that this concept will not create serious administrative difficulties. However, if problems arise, our association might be able to assist the responsible officials in establishing guidelines and we would be willing to do so.

The provisions of subsections 21(3) and 21(4) are similar in many respects to other provisions in the Employment Standards Act, 1974, and the regulations thereunder with respect to an employee superannuation or pension fund or an employee insurance plan. We suggest that these provisions should be incorporated in that act and in the regulations thereunder.

In the general area of trade unions and professional associations we have noted that no exemptions or qualifications are provided in the proposed legislation with respect to the right under section 5 to equal treatment in the enjoyment of membership in any trade union, trade or occupational association or self-governing profession. Since insurance benefits are provided to members of a trade union or a professional association in a manner very comparable to those for employees, we urge that provisions comparable to those in section 21 be added.

A couple of comments, first on the powers of investigation provided under the act. Our comments are primarily related to insurance contracts and to employee benefit programs, but we have noted the concerns which have been expressed by other organizations and individuals about the scope of those powers and the potential for abuse. We are confident that these powers are being used with discretion, but our members share these concerns and urge that this portion of the legislation be reviewed carefully. In effect we are concerned that people are concerned about the provisions of the Human Rights Code and feel that any suspicion or any potential for abuse should be reviewed carefully and preferably removed.

Our general comments: Since the implementation of this legislation could require substantial adjustments in some employee benefit programs and practices, including modification of collective bargaining agreements in some instances, we urge that adequate time be provided for these adjustments to be accomplished in an orderly fashion as was provided when the existing regulations regarding such plans were introduced under the Employment Standards Act of 1974.

We believe that the facilities of the association were helpful in communicating with employers and benefit consultants when the aforementioned regulations were introduced, and we would be pleased to assist wherever possible in communicating to our members and their clients those changes regarding employee benefit programs which arise from this legislation.

Mr. Chairman, that concludes our presentation. I would like to thank you for your attention and we look forward to your questions.

Mr. Chairman: Thank you very much. Are there any questions from the committee?

Mr. J. M. Johnson: I guess you heard the question which I addressed to the CNIB a minute ago pertaining to extra billing for a blind person and I think you heard the answer. Could you comment? Is there an extra charge for a blind person for life insurance, for example?

Mr. Burns: I guess it is necessary, in responding to that, to divide between employee benefit, or what is usually called "group insurance," and individually underwritten insurance on the other hand. In the case of individually underwritten insurance, where a person looks at each risk and attempts to decide whether it is average or higher than average, the answer would be that most life insurance companies today would issue life insurance at standard rates, providing there was no degenerative aspect of the blindness. They probably would charge some extra premium, or in some cases deny accident benefits.

The example that was given earlier today seemed to draw a parallel between the exposure to accident and travel. Accidents, as we know, can happen any place such as in the home, et cetera. It is statistically supportable that as a group blind people are probably more exposed to accident risks, but the same evidence is perhaps not as strong in the case of life. The simple answer is the case of individual life insurance, probably no extra charge, in the case of accidental insurance, probably an extra charge, and in some cases, perhaps the denial of a benefit if a company was particularly conservative.

Turning to the health insurance, which is typically disability income replacement, again, there would probably be an extra charge or, in some cases, absolute denial of a benefit.

Now, if I can look at the other side, which is the group insurance or employee benefit, here the individual enters the insurance program as one of the employees, whether he works for an

employer of 25 lives or of 1,000 lives. He is simply one of the people who will affect the experience. Particularly in the large employer groups, those of, say, 100 or 150 employees and up, the case is rated on the basis of the overall result that is expected.

Under a technique referred to as experience rating you look back and say, "What experience did this case have?" and you then set the future rates on that basis. So, clearly in the case of employee benefit insurance, as long as the employer is willing to have him covered, he would simply be thrown into the averages.

Mr. J. M. Johnson: All right, Mr. Burns, maybe I could deal just specifically with life insurance. Let us be specific as well in dealing with a blind person. I am going by memory. We have had hundreds of presentations made. I am just trying to leaf through to find the case. I cannot, but it was back in June.

It seemed to me that one of the individuals presenting their concerns to our committee suggested that they had to pay higher rates and in many cases, they were denied some of the benefits. There was no statistical proof from the insurance companies to substantiate the extra charges. In this instance, they asked on numerous occasions, for the statistics which would substantiate it and it was not forthcoming.

You mentioned that there are statistics that show blind people have a higher mortality rate for age group.

Mr. Burns: No, I said accident.

Mr. J. M. Johnson: Accident--and there is no difference in the charge for--

Mr. Burns: I can say categorically that many, if not all companies viewing a life insurance risk for an individual who is blind, and that blindness is, let us say, caused by accident rather than in the example that was discussed earlier--diabetes--I could say categorically that most major companies would write that case as standard.

Mr. J. M. Johnson: As standard. That is good. I am maybe--

Mr. Eaton: If there was a complicating factor like diabetes, you would rate somebody higher whether they were blind or not.

Mr. Burns: Diabetes is the overriding consideration.

Mr. Eaton: Diabetes can often cause blindness.

Mr. J. M. Johnson: We are talking about another--

Mr. Black: But I think this illustrates that the attempt is made to look beyond the obvious handicap of blindness and look at the underlying risk. Even in the area of accident, I have recently been told of certain experience that indicates that the partially-sighted individuals have a higher accident risk, but the

totally blind individuals do not, that their accident experience is reasonably comparable to fully-sighted people. This is a distinction that I was not aware of before and is one that is coming to light.

Mr. J. M. Johnson: In the event that this comes up again, would you people be willing to provide some factual information if requested?

Mr. Black: Yes.

Mr. Lane: Mr. Chairman, I think it is fair to suggest that occupational hazards would increase the premiums in many more cases than physical impairment would; is that not right?

Mr. Burns: That would certainly be true in disability type coverages, rather less so in the case of life insurance coverages.

3:20 p.m.

Mr. Lane: Having been in the business myself, I can recall that miners, deepsea fishermen and people with a high mileage in flying and so forth usually had quite a severe increase in rating for those types of jobs. If my recollection is right, it would be a great deal more than a disabled person per dollar.

Mr. Burns: Yes, I would agree with that.

Mr. Lane: I just wanted to make the point that it isn't discrimination, it is really the risk we are looking at. If you are flying around in an airplane and don't know how to operate it, you are a greater risk than if you are working on a farm or in a business. I think there has always been those types of changes in ratings for various people in various occupations. I think that, dollarwise, it would be a lot greater than what we are talking about here.

Mr. Burns: Yes. I would agree.

Mr. Renwick: Mr. Chairman, I have difficulty in agreeing with your suggested changing of the wording of section 20 to remove those contracts from the purview of the human rights commission by providing that they simply continue under the supervision of the insurance department of the Ministry of Consumer and Commercial Relations.

If I could perhaps explain my concern, the act before us and the present act provides for a complaint procedure by a person who believes that he or she has been discriminated against. As I take it, there is no such procedure available under the Insurance Act. Is my recollection correct on that?

Mr. Burns: Do you want to comment on that, Charlie?

Mr. Black: I believe that impression is correct, Mr. Renwick, that there is no well-outlined complaint procedure under the Insurance Act. However, the operation of the superintendent's

office does administer and investigate complaints. It is not as well defined as under the Human Rights Act.

I might mention that our basic concerns in this area are really twofold: first, the complexity of the risk classification procedure and that those administering it be reasonably cognizant of the complexities and the factors involved; and, second, that there be some means of providing clarification for terms such as "bona fide" and "reasonable" that are used in the legislation.

As indicated here, one suggestion which our association has presented during the hearings of the select committee on company law was this approach to strengthen really the Insurance Act and to include a regulation there that clarified the standards for risk classification. Those are really the basic concerns.

Mr. Renwick: When I spoke about a complaint procedure, the Human Rights Code of course has a staged procedure and a process. I take it then that you are in agreement with me that, while you can phone or write to the department of insurance and register a complaint, you do not have any status in the process of that processing of any such complaint.

Mr. Black: I believe that is the case and, if this route were adopted, that might be one of the changes necessary in the Insurance Act to accommodate it.

Mr. Renwick: While I recognize that your association does not deal with it, the second matter is that when I sat on the select committee on company law dealing in the automobile insurance field, I was concerned about the whole question of the relevance of age, sex and marital status for risk classification purposes for automobile insurance, and some very serious questions were raised about that. I understood that the former minister, the Honourable Frank Drea, raised that question with the industry and that there was to be some process to deal with it.

As I say, your association is not the appropriate one, but since you had included, naturally, in your amendment to section 20, the automobile insurance contract, I thought I should draw that to your attention as a concern in the hope that the corresponding association in that field will make a presentation to us about it.

The other point was the question we dealt at length in the select committee, in your field, the question of the discrimination in rates on the basis of sex for life insurance and for annuity contracts. I believe it was the conclusion of the committee that it was basically a decision that would have to be made as a matter of public policy. What is the position of your association on that question? Do you see, as a matter of insurance principle, a disappearance of that actuarial statistic based on sex or longevity?

Mr. Burns: Perhaps I can comment in a general way, and it responds to your point number two and number three. If you look at certain types of insurance as being virtually required--and I put automobile insurance in that category; the law of the province

says you must have a minimum type of coverage--if you recognize that there are certain types of insurance that are virtually mandatory, then all you are talking about in terms of taking high-risk and low-risk people in on the same basis is a matter of its effect on the overall price; but nevertheless I, as a member of the low-risk and, therefore, the low-cost group, have to have the insurance and I do not have the right to opt out.

If you go to the other end of the scale, which is voluntarily purchased, let's say, life insurance or disability insurance, then if an individual believes that he or she is a member of a group that is clearly paying too much to subsidize another group of people, then we believe that the inevitable result will be that the good risks, the first-class risks, will tend in lesser numbers to purchase insurance and the higher-risk people will tend in higher numbers to purchase insurance.

Sitting somewhere in the middle of these two extremes that I have tried to describe is the type of insurance--and it is very popular in Canada--that is provided as a condition of employment or as an employee benefit. In that situation, you are really only talking price, as long as the employer is willing to pick up the price.

To respond specifically to your last question, the association's position is that we are strongly of the opinion that differences in mortality and morbidity on the basis of sex are so clearly demonstrable and result at varying ages in significant differences that that distinction, along with age, is a necessary part of the risk classification process of insurance.

Mr. Renwick: So it would have to be a decision of public policy for other reasons to eliminate that discrimination?

Mr. Burns: Yes. That would be correct.

Mr. Chairman: Thank you very much, Mr. Burns, Mr. Black and Mr. Bier, for your presentation today. We appreciate your offer of further assistance if any of the members of committee wish it.

The Canadian Daily Newspaper Publishers' Association; Mr. Baird.

3:30 p.m.

Mr. Baird: Mr. Chairman, members of the committee, I am Sandy Baird, the publisher of the Kitchener-Waterloo Record and the Ontario co-ordinator of the governmental affairs committee of the Canadian Daily Newspaper Publishers' Association.

I would like you to meet my colleagues. Paul Wilson, to my right, is publisher of the Owen Sound Sun Times, and he is Canadian chairman of the governmental affairs committee of the association. Fred Hamilton, on my left, is from Hicks, Morley, Hamilton, Stewart, Storie; he is the counsel for the Canadian Daily Newspaper Publishers' Association.

We represent the 36 Ontario members of the association. You have copies of our submission. Let me stress that the association has an abiding and very deep commitment to human dignity through equality of opportunity, to human rights and to human freedoms; thus, we would like to draw your attention to some aspects of the proposed legislation that, in our minds, require improvement to avoid conflict with other aspects of individual liberty and dignity.

The principles which have been adopted by association members make a point which cannot have too much stress: "Freedom of the press is an exercise of the common right to freedom of speech. It is our right to inform, to discuss, to advocate, to dissent. The press claims no freedom that is not the right of every person."

I would like, if I may, to repeat the last part of that quotation. "The press claims no freedom that is not the right of every person." And, to repeat, among the rights that we believe are the right of every person is the right to dissent. Newspapers provide forums for the free interchange of information and opinion. That, of course, means that they represent disparate voices and disparate views. It means too that they tolerate and publish news and attitudes which run counter to the values and viewpoints of individuals, groups or society as a whole. This, newspapers must do. Without that freedom and that toleration they would not be discharging their role.

Mr. Wilson: Mr. Chairman, the specific section of Bill 7 that gives the association the greatest concern in this regard is section 12, which states that "a right under part I is infringed where any matter, statement or symbol is disseminated that indicates an intention to infringe the right or that advocates or incites the infringement of the right."

When juxtaposing this section with sections 8 and 10, we are alarmed at the serious threat to freedom of expression. That freedom is such a basic and fundamental human right that even a potential threat to its existence must be regarded very gravely.

While what may amount to advocating, inciting or intending to infringe a right under the act is unknown, we do not wish any of our members, or indeed any citizen of Ontario, to fear that his civil liberties of free speech are interfered with by this bill.

We believe that the existing laws of libel and slander and the provisions of the Criminal Code are sufficient curbs on freedom of expression. Sections 12, 8, 10 and 9 are drafted so as to clearly and explicitly prohibit publishing statements which today would be protected by society's regard for freedom of expression.

The danger of this section lies not only in whether a board of inquiry would ultimately agree that a particular statement advocated, incited or intended to infringe a right; it also lies in the threat of a board of inquiry hanging over those obligated to fulfil their mandate by reporting the news factually and fairly as well as persons who wish to express their views, whether those views are laudable or obnoxious to others in our society.

Mr. Baird: As you will see by our submission, another aspect which troubles us is what we perceive as the vagueness of the legislation. It is axiomatic that, to direct someone in a course of conduct or to constrain someone from a course of conduct, it is essential that the someone know precisely what is expected of him. We believe that the bill is lacking in the specificity essential in this kind of legislation. Mr. Hamilton has some additional comments in this area.

Mr. Hamilton: Mr. Chairman, our concerns are set out at the bottom of page two and on page three of our brief. First, they consist of the use of the word "worth" in the preamble as opposed to the use of the term "equal rights" as used in the previous code. Our concern in that regard is of course based on the fact that the cornerstone of any legislation is that the citizen easily understand what he is expected to adopt by way of actions in conformity with the legislation.

We draw these matters to your attention particularly because of the area of human rights that causes some dishonour to reflect upon a person charged with an infringement of a human right. Therefore, we think it fundamental to the legislation and its importance in creating the proper climate that it be easily understood.

From that point of view, we are concerned first of all with the use of "worth," because it has a subjective element. The previous aspect in the preamble of the code dealt with "rights." Our concern with respect to "worth" is that it has the subjective element that we point out on page three: Who is going to measure worth? What are the objective standards to measure worth? From that point of view, surely individual actions give rise to unequal or different results. From that point of view, we are troubled by the use of "worth."

We are also concerned about certain other aspects of the legislation. We respectfully direct your attention, first of all, to section 9(e)--and that is a typographical correction on page three, sir. That is based on the definition of "equal" when considered in connection with the definition provision of section 8. It states that no person shall do anything that results "indirectly in the infringement of a right under part I." "Equal" under section 9(e) is defined to mean subject to all requirements "that are not a prohibited ground of discrimination."

Then you read section 10, which provides for the offence of constructive discrimination by indicating that a right is infringed where a requirement is imposed that is not prohibited but would result in disqualifying a group identified by a prohibitive code of discrimination. In that sense we find the section, particularly when balanced with the other sections, to be very confusing and ambiguous, and we are concerned as to its interpretation.

We direct your attention to the bottom of the page. From a practical point of view, the association is trouble by the potential impact of such prohibitions. One must recognize that most employment-related criteria, however rational, relevant and

reasonable they may be, will affect the specific groups defined by the act and in the act in different ways, directly or indirectly. For example, any seniority clause in a collective agreement or any education or experience factor will statistically advantage groups based on age. Thus, by definition, education, experience or seniority requirements are discriminatory and unlawful.

Although section 10 makes an exception for "reasonable and bona fide" requirements, the standard is left to an ad hoc board of inquiry. The proponents of the legislation, in our respectful view, fail to give any significant guidance to those who must make decisions on the spot without the benefit of hindsight. Surely, in the search for legislative protection from the deliberate scheme that sets up requirements in a manner calculated to bring about discriminatory results, it is unnecessary to sweep into the net of illegal conduct those persons who sincerely establish criteria that are commonly regarded as reasonable by many sectors or institutions of our society.

We suggest that the sections in question be modified to require deliberate action or intention before any finding can be made that indirect or constructive infringement of the act has occurred.

Mr. Baird: Mr. Wilson has some comments on what might be styled as the handicapped and harassment.

Mr. Wilson: Mr. Chairman, one of the major innovations of Bill 7 is the inclusion of the physically, medically and emotionally handicapped as a protected group.

We are in wholehearted support of efforts to educate the public to the acceptance and understanding of persons who have such handicaps and to bring such persons into greater participation in all the benefits and responsibilities of our society.

It is not only legitimate but also desirable to prohibit discrimination against handicapped persons simply because of their handicap, whether the discrimination arises from personal repugnance or from ignorance of the true implication of that handicap.

However, like most of the prohibitions in the present code, physical, mental or emotional handicap is not per se irrelevant to employment considerations. In that regard we are very concerned with the way in which the legislation as drafted--I think I would have to emphasize "drafted"--ignores the rights and obligations of other parties.

Section 16 of the bill declares that a right is not infringed because of a handicap where "in the particular circumstances the handicap renders the particular person incapable of performing the essential duties" attached to that right.

3:40 p.m.

Again, in conjunction with section 16, however, we have

concerns with section 38(3), which allows a board of inquiry, where an employment right is infringed on the grounds of handicapped, to make some very broad remedial orders. This allows the board to revise "the essential duties" of the job.

It seems that a board of inquiry has the power to make orders that could affect the job duties and functions of other employees at the work place. If the essential duties of a job must be modified and those duties still must be carried out--and there is a fine point there between modifying essential duties and having some that are considered essential and must be still carried out--then those duties clearly will fall on other employees.

These other employees, such persons, are not parties in the action and are not represented at the hearing. Employees functioning satisfactorily in their job classifications who find that their job duties are changed because of an order of a third party will conclude that their rights and interests have been adversely affected without consultation.

It will certainly not assist in the creation of a climate of understanding and mutual respect for the dignity and worth of each person, in a sense, in a perverse way.

The other thing that is troubling to the newspapers is that a risk exists in interfering with collective bargaining and the fulfilment of contractual obligations.

The next area that we deal with is harassment. The committee should perhaps consider amendments to section 38(4) and 42, which make an employer responsible for any action done by an employee, even without the knowledge or approval of the employer and even if not done within the scope of the employee's authority.

We would suggest that the employer--and not only newspapers, but also others perhaps would be affected by this--ought to be responsible only after the conduct complained of has been brought to the employer's attention, the employer has not taken reasonable steps to prevent its recurrence and the conduct complained of was carried out by someone acting within his or her apparent authority. This is a tricky point, but it is the kind of thing we think could stand clarification.

These sections do not take into account the limitations of conduct by an employer in controlling the action of his employees. Employers do not have the degree of absolute authority to order and punish and penalize employees envisaged by these sections. An employer is restrained by various pieces of legislation and contractual obligations, including the Labour Relations Act, the Employment Standards Act, the common law and, of course, collective agreements.

What may seem reasonable steps to the employer or to the human rights commission or to a board of inquiry may not seem reasonable to a court, the employee, his union, the labour relations board or an arbitration tribunal. We would suggest, therefore, that where an employer takes reasonable steps in all

good faith to inform employees of the law, an employer's liability for an employee's action can only follow actual knowledge and express authority.

In the same vein, the committee's attention is drawn to section 21(1). As publishers of advertisements, newspapers reserve the right to make judgements on the standards of taste and aesthetics in placing advertisements. However, to impose a burden on newspapers to make a decision as to whether an advertisement indirectly indicates qualifications on a prohibited ground of discrimination (particularly in view of section 10, which gives rise to a constructive violation of the act) is really too high a burden for any third party to bear. It puts the newspaper in a position of having to act too much like an enforcement agency or an arm of government, a situation that is corrosive of the highly cherished independence of the press.

We would respectfully submit that there should be protection for publishers who publish ads in all good faith believing those ads to be in conformity with the legislation.

Mr. Baird: Finally, Mr. Hamilton has some comments on the bill in such matters as primacy and the proposed procedures.

Mr. Hamilton: Mr. Chairman, we are addressing these matters commencing at page seven of the brief; it would be of assistance to follow our comments, although we will try not to read the submission.

Our concern with respect to the first matter, primacy, is the uniqueness perhaps, or the perplexing nature of this principle being introduced in this legislation. We are not aware of its common adoption in other legislation. It will impose rather complex difficulties for an employer, when confronted with his other responsibilities under collective agreements, under health and safety legislation and under employment standards legislation, if he is placed in the position where this piece of legislation is said to have primacy.

In view of the importance of the other pieces of legislation, we are unsure why this aspect should be given predominance and in what fashion the decisions of boards of inquiry under this legislation can be said to supersede or be superior to other tribunals, be they arbitration boards or the Ontario Labour Relations Board.

It is from this aspect that we raise before you our concern as to the consequences of adopting legislation that is said to be of prime importance or overriding concern. We wonder to what extent your Legislature may be asked to adopt in other pieces of legislation the same sort of primacy concerns.

We are unsure as to its approach. We understand the basic principles of legislative interpretation; that if there are varying pieces of legislation, they are to be read to bring the purpose of the varying pieces of legislation in harmony.

We are concerned, however, as to the effect that the primacy

issue will have in terms of this legislation and particularly where you may have valid and binding decisions being made by other boards and tribunals but, nevertheless, superseded by a more superior interpretation, if you will, under the Human Rights Code.

It is from that point of view that we wonder as to its introduction, as to its purpose and, frankly, as to its practicality, in view of the importance of every citizen abiding by all the legislation. We ask why this particular piece of legislation is to be given primacy. We are concerned that it may cause substantial difficulties in terms of its interrelationship with other pieces of legislation.

In terms of the procedure, we are concerned--and this is referred to on page eight--that there are being experienced, I think generally speaking, some delays in matters proceeding to determinations under human rights complaints.

We would speak strongly in favour of any procedures that might adopt more expeditious treatment, both from the point of view of the complainant and from the point of view of the person who is charged. There is a period of uncertainty; therefore, we think it might be of assistance if there is some more expeditious route found. We would favour a system that will expedite the investigative procedure.

One continuing problem we have experienced is with respect to the role of the officers of the commission; that is relative to the duplicate nature of both being mediator and investigator. We think it would be of assistance to the commission's work if those two functions were separated. Often this leads to a different approach between the parties and in the investigation. It can lead to some confusion at the hearing, where statements being made to the person who is investigating on behalf of the commission are made in connection with his approach as a conciliator; then some confusion when they come out in the course of the inquiry as statements that were made in the course of an investigation. It can lead to some confusion as to this aspect of the role.

We think there could be an improvement in the overall working of the system if those two functions--which are, in some ways, the wearing of two hats--could be separated so that they were separate and distinct aspects of the matter being treated.

On page nine, we direct your attention to our concern as to the right to counsel and the right to have others present when any investigation is proceeding. We ask that there be some protection against self-incrimination and the right to remain silent which are raised by virtue of section 30(6) of Bill 7.

Our primary concern is the underlined portion of that draft subsection, that "No one shall hinder, obstruct or withhold from the person investigating anything that is or may be relevant to the investigation or complaint."

3:50 p.m.

Our concern is for the aspect of self-incrimination. One

other more modest, yet very fundamental aspect, on page 10, is that we submit that there should be included in the code a reference to the identification of the person being charged with the material information that is intended to be proven against him, so that he knows what case he has to make. Frankly, that expedites the proceedings, because it then avoids delays.

Other legislation, such as the Labour Relations Act, and other pieces of labour legislation, contain the requirement that the defendant or the respondent be given the material facts upon which it is intended to rely--not the evidence obviously--and on which it is based.

We also would draw to your attention the recourse, in terms of a time limit, that is referred to at the bottom of page 10. It may be that there should be a duality of the right to refer the matters to the commission as to whether or not a hearing has been ordered. There should therefore be, in our submission--whether it is 30 days may be debated--a reasonable time limit imposed for reconsideration under that section.

Similarly, we say that the respondent should be given equal right to request reconsideration where the commission has decided to proceed to a board of inquiry.

Mr. Baird: Mr. Chairman, we thank you and the members of the committee for your attention, and of course we shall be happy to strive to respond to any questions you may have.

Mr. Chairman: Thank you very much.

Gentlemen, are there any questions from members of the committee?

Mr. Renwick: Mr. Chairman, I appreciate the time and obvious effort that went into the preparation of the brief, and I do not have time today, in the pressure of submissions, to deal with each and every one of them.

Let me express my personal concern about one item, that is, not your expression of it, but the point which has been raised under section 12 of the act. I have been concerned about the extent of the attack on this bill as being an infringement of freedom of speech. I should like, if I could, to express my view and ask for your comment on my view at this time.

I take section 12 to say that a right is infringed where a statement is disseminated that advocates or incites the infringement of the right. The word "disseminate" is defined in very broad terms to mean to communicate by whatever means.

I had thought that it was within our competence by this act to create a right to protect people against certain kinds of discrimination. I had therefore also thought that it was within our power to state that anyone who advocated or incited a breach of that law was subject to the prohibitions contained in the act, and that would not interfere with freedom of the press.

If a person or an organization were to say specifically that they advocated or incited--were engaged in inciting people to break the law--that would infringe someone's rights as created under this law. If a newspaper were to report that event in the normal way, I would be very concerned if the media thought they would be subjected to the prohibitions in the statute.

I do not read it as stating that a report by you that states a given individual or organization was advocating or inciting people is infringing a right under this act. By reporting accurately what was said--and the conclusion would have to be drawn by somebody else whether that event was advocating or inciting an infringement--the media would not, in my view, have brought down the strictures of this act that no person shall infringe a right under this act.

Mr. Baird: It may seem unlikely, but in our view by the way it is drawn it has that potential. Paul Wilson, publisher of the Owen Sound Sun Times, disseminates each day a variety of views, multiple thousands of views, facts and whatever. If his reporter in the hypothesis you cited was to quote somebody at a meeting saying the most outrageous things, it is our view--and I am sure Paul shares my view--that strictly speaking this section has the potential for including him within its provisions merely for repeating or reporting what is said.

Mr. Renwick: This committee will certainly want clarification on that, but I would like to comment about whether you believe that it is within our power to say that if we create a right under a statute that the advocacy or incitement to break that law is something which is also subject to our power to prohibit by way of punishment or whatever the other consequences.

Mr. Baird: Sir, I am not disputing the sovereignty of the Ontario Legislature.

Mr. Renwick: But your concern is that if you were to report that incident--

Mr. Baird: Yes. May I, sir--

Mr. Renwick: --in the normal way, you would be caught under this section.

Mr. Baird: The interpretation and the application of that, Mr. Renwick, under section 9(d), "disseminate means to communicate or participate in the communication with another, whether directly or indirectly, or with, or through another, by whatever means," and that is casting a very broad net.

Mr. Renwick: I do not--I think--

Mr. Baird: I am not a lawyer, sir.

Mr. Renwick: No. I was not trying to engage in a legal argument.

Mr. Baird: No.

Mr. Renwick: I would like you to know that it is not our intention to sweep into the net some infringement of what I happen to think is my freedom; that is, the freedom of the press to provide me with information on which I can make my judgements and express my opinions and views.

Mr. Wilson: Mr. Chairman, if I--

Mr. Renwick: I would appreciate, Mr. Brandt, if you had any comment to make on that specific problem--

Mr. Brandt: Mr. Renwick, the views that you have expressed are absolutely dead on with the intent of the ministry. Perhaps there is some way that the wording could be altered to clarify the section to the satisfaction of the gentlemen who are appearing before us. Certainly you are absolutely correct in your interpretation, as I understand it.

Mr. Wilson: If I may, Mr. Brandt, the brief makes clear that section 12 is pretty well covered in other legislation, such as libel and slander laws and other provisions in federal and provincial legislation. I am not altogether sure that it will, if amended, achieve a great deal. Is that correct, Mr. Hamilton?

Mr. Brandt: There is not a wording that you could propose, as an example, that might clarify the section. You are asking for, I gather from your remarks, its complete removal.

Mr. Baird: No. We find--go ahead.

Mr. Wilson: I was going to say, Mr. Chairman, just one point I would like to make to assure Mr. Renwick that there are, from time to time, occasions where we are approached to temper a view or to not publish something for some reason or other. Perhaps more than anything else within this framework we see the risk for that finding its way into confrontation between two groups.

The risk is there and in terms of the way the proposed legislation has been framed, we have not looked at the way of providing alternative language but we would most sincerely recommend to you that it be examined very closely for the fact that in thrusting in one direction there isn't a very serious backlash. I guess it can cut both ways. There is a risk here that exists.

I certainly understand the motivation in establishing this was probably very much in keeping and consistent with Bill 7, but this particular area opens up an avenue which if at which some point in the future someone wishes to abuse it for whatever purposes they can use it. I guess I can say we have been got at pretty well over the last year or so.

4 p.m.

Mr. Baird: Mr. Brandt, to clear up my position on this. I wasn't saying, "Well just grab it, take it out." I was saying offhand I don't have any alternative. I haven't given any thought

to it. We certainly have not discussed it. I am just pointing out and I think the brief points out that there are provisions within other legislation which give us more constraints than most people realize. We are operating under a great number of constraints, up to but not yet including (inaudible).

Mr. Renwick: Could I perhaps express the distinction because I don't like us to be engaged in enacting a vague law either. When I saw the attack coming in on the bill and I had to give further consideration to the wording that was there, I could not make the jump which said that if X advocated or incited a breach of this law, and a newspaper reported that event that you could have imputed to you that you were advocating or inciting a breach of the law. That is the way I read it.

Mr. Hamilton: The difficulty, Mr. Renwick, is in the way other provisions of the legislation are drawn. It is the ambiguity that concerns some of the people appearing before you. It is not in terms of its principal concern, but, if you look at the word disseminate for one moment, it means to communicate or participate in the communication with another. Surely, that is what a newspaper does. It participates in the communication with another, whether directly or indirectly.

When you read that or "with or through another, or by whatever means," it is a very sweeping effort. No one is critical of the desire of the persons primarily charged with the legislation from seeking to enact legislation that achieves its purpose. The concern is to strike a balance with the other freedoms or rights that exist in order to get a moderately successful application. It is when you sweep in that broad extreme and then marry that with section 8 that says, "No person shall infringe or do anything that results directly or indirectly in the infringement of a right," under this part that there is a problem. When you draft the legislation you say, "No person shall infringe or do anything that results in the infringement of a right," under this part.

It is where you start distinguishing and qualifying it between directly or indirectly that you must have meant to sweep some indirect aspects or influences in. Then when you sweep in "disseminate, whether directly or indirectly, or participate in the communication," if it just dealt with the primary source of the communication perhaps that would be sufficient. But even then, what is the freedom of speech as opposed to? It is very difficult.

Mr. Renwick: Well, Mr. Chairman, I didn't want to pursue it further. All I would say is that we would certainly appreciate any assistance you could give us that would make the distinction between what has come out of this discussion and that which I understand it is the intention of the government. Certainly, I had thought that this did not interfere in any way with the publication by a paper of its report or its comment or whatever it was.

Mr. Wilson: Mr. Renwick, for your guidance, and I won't go into detail right now, but there was a case called the Chernesky case in Saskatchewan which related to a letter to the

editor published by a newspaper and again due to just the nature of the wording of the Libel and Slander Act, which is a provincial statute in Saskatchewan, it went to the Supreme Court of Canada and it is of a similar nature. In your deliberations you may find it useful to look at that as it applies to this wording here.

Mr. Baird: I think it is only fair to point out that the Ontario government was the first government to respond with legislation which changed the import of that decision.

Mr. Renwick: Yes. We had the benefit of the press attendance here to assist us in that way and if you could assist us similarly we would appreciate it very much.

Mr. Chairman: Thank you very much, gentlemen, for your presentation today and your offer of assistance to us.

The department of sociology and anthropology, University of Windsor; Professor Adam.

Mr. Adam: Mr. Chairman, committee members, my name is Barry Adam. I am an associate professor of sociology at the University of Windsor. Professor Henry Minton is unable to be here today.

I would like to address a serious omission in Bill 7 and to briefly review the research in the social sciences pertaining to the inclusion of sexual orientation in the Ontario Human Rights Code. This report focuses on two major concerns; one, public perception of the issue and two, social scientific evidence on homosexuality and the work place.

The question of whether sexual orientation should be included in human rights codes was posed nationally by the Gallup organization. A clear majority of Canadians, 52 per cent, favoured its inclusion. Thirty per cent opposed it and 18 per cent did not know or did not respond.

It should be kept in mind that the question was posed in 1977 in the midst of an international campaign against human rights for homosexuals led by Anita Bryant. These might be considered unusually adverse conditions for finding support for the rights of homosexuals, making this 52 per cent an uncharacteristically low estimate of support.

Mr. Brandt: Excuse me, how large was that sampling, just as a matter of interest before you go on?

Mr. Adam: The usual Gallup sample; I am not sure what the exact number is but it is the number they always use.

In 1979, the Canadian Human Rights Commission asked a tougher question but found that 68 per cent of Canadians agreed that homosexuality should be no bar to employment. The commission "asked whether a self-acknowledged homosexual with superior qualifications should be hired into the Royal Canadian Mounted Police security service and 68 per cent agreed, 25 per cent disagreed and seven per cent were indifferent or had no opinion."

That quote is from the Globe and Mail.

Social psychological studies reveal that prejudice against lesbians and gay men displays many of the same characteristics as prejudice against racial minorities and against the equality of women. In all of these cases, support for the civil rights of women, gay people and minorities increases in large cities and suburbs but is less among farm and small town people, increases with level of education and decreases with advancing age.

4:10 p.m.

In Canada, for example, majorities of every age group under 50 support the inclusion of sexual orientation in human rights codes. For those over 50, a plurality--44 per cent--supports the inclusion and 31 per cent are opposed, while a higher than average 25 per cent do not know or did not respond.

There is no evidence in the social sciences that homosexuality has any bearing on work performance. Indeed, in an official policy statement adopted in 1975, the American Psychological Association states, "Homosexuality per se implies no impairment in judgement, stability, reliability, or general social or vocational capabilities." And, "the American Psychological Association deplores all public and private discrimination in such areas as employment, housing, public accommodation and licensing against those who engage in or have engaged in homosexual activities." And, "the American Psychological Association supports and urges enactment of civil rights legislation that would offer citizens who engage in acts of homosexuality the same protections now guaranteed to others on the basis of race, creed, colour, et cetera."

Similar positions have been taken by the Canadian Sociology and Anthropology Association and by the American Sociological Association.

Studies in race and minority relations point out clearly that without legal protection, people become the objects of prejudicial activity. Without legal protection, legislatures tacitly approve street violence directed against minority people, unfair labour practices, bias in the criminal justice system and residential discrimination.

Studies conducted by such social science researchers as Marcel Saghir and Eli Robins, Martin Weinberg and Colin Williams and Martin Levine reveal widespread and chronic mistreatment of homosexual people in the absence of legal protection. Indeed, not only do they suffer discrimination but they are also without the means legally to remedy it in the current situation.

Inclusion of sexual orientation in the Ontario Human Rights Code would confer no special privileges to homosexuals, but would simply assure the right to privacy and freedom from unwarranted intrusion in personal lives. We believe it is the responsibility of the government to guard against the victimization of any group of citizens by following the lead of Ottawa, Toronto and Windsor

in endorsing the rights of all without regard to sexual orientation.

Then a list of references follows.

Mr. Chairman: Are there any questions from any of the committee members?

Mr. Renwick: Is there a similar body in Canada to the American Psychological Association?

Mr. Adam: There is. It is the Canadian Psychological Association. It has not taken a position one way or the other on this issue.

Mr. Renwick: Has it been a matter of debate in that association? First of all, I should ask: Is that association a representative association?

Mr. Adam: Yes, it is representative in the same way that the American Psychological Association is in that most Canadian psychologists do belong to it.

Mr. Renwick: Has there been any debate within that association, or discussion or consideration of this question?

Mr. Adam: From what I am aware of, the Canadian Psychological Association has established a division on gay and lesbian interests which sponsors academic sessions on the subject and so on.

Mr. Renwick: They have a position?

Mr. Adam: They have a division within the association. As far as I know, they do not have an official position of any kind though.

Mr. Chairman: Any further questions? Thank you very much, Professor Adam, for making your views known to us.

Dr. Elgie has asked if he could make a statement to the committee tomorrow morning. I think it can be accommodated within our schedule if there is no objection. That would be the first thing tomorrow morning.

Mr. Renwick: It is certainly agreeable to me.

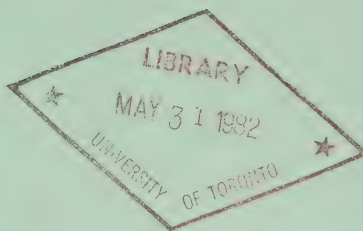
Mr. Chairman: As I understand it, there is one group which was on tomorrow that is not going to appear tomorrow, so it is probably an appropriate time. That will be the first thing on the agenda at 10 o'clock and then into the rest of the groups. We adjourn till 10 a.m. tomorrow.

The committee adjourned at 4:15 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

THE HUMAN RIGHTS CODE

THURSDAY, SEPTEMBER 10, 1981

Morning sitting

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From the Ministry of Labour:
Brandt, A. S., Parliamentary Assistant
Elgie, Hon. R., Minister

Witnesses:

From the Toronto Board of Education:
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Moll, D., Trustee, Ward 9
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Nicholson, L., President
O'Connor, T., Secretary-Treasurer
Shaikh, F., Equal Opportunity Officer

From the Social Action Committee of the First Unitarian
Congregation of Toronto:
Amdur, R.,

LEGISLATURE OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, September 10, 1981

The committee met at 10:06 a.m. in room No. 151.

THE HUMAN RIGHTS CODE
(continued)

Resuming consideration of Bill 7, An Act to revise and extend Protection of Human Rights in Ontario.

Mr. Chairman: I will call the meeting to order. The first item on the agenda is a statement from the minister, Hon. Mr. Elgie, who indicated to us yesterday that he would like to make a statement to the committee. He is first on the agenda, so Dr. Elgie, we will turn it over to you.

Hon. Mr. Elgie: Thank you, Mr. Chairman and members of the committee, for permitting me to appear before you this morning to make this statement. As you know, either my parliamentary assistant, the member for Sarnia (Mr. Brandt), or I have been in attendance throughout the course accompanied by officials from the ministry at all times. Our purpose has been and continues to be to listen to the presentations that are being made in preparation for the clause by clause debate, which I understand will take place next month.

As I have said once before, to avoid any prejudgement, I have deliberately refrained from participating in the exchange that normally follows the public presentations, although I have, of course, been carefully evaluating the contents of the various submissions. The reason for my request to make a statement today is the considerable attention that has been given to certain provisions of the bill, particularly those dealing with the investigative powers of human rights officers: the power of entry, the so-called search and seizure power, the power to interview witnesses and the right of witnesses to be represented during questioning.

If I understand the thrust of the criticism, it is that the bill may give unprecedented powers to human rights officers which, if exercised, could seriously jeopardize the fundamental rights of those under investigation. Because of the importance of these suggestions and the vigour and stridency with which they are being voiced, at least in some quarters, I thought it advisable to address them this morning in the hope that concerns may be allayed; concerns, which to me at least, seem to be distracting attention from the important substantive provisions of the bill.

I would like to trace the legislative history of the investigative powers of human rights officers in Ontario to support the proposition that powers given under Bill 7 do not differ in any material respect from the powers that officers have held for some years. I would then like to analyse the provisions of the current bill and explain their meaning and purpose, with

particular reference to the allegation that the power to search and seize without a warrant is present in the bill.

I then wish to say something about the investigative powers given to inspectors and officers under other legislation to show how they compare with the powers given to human rights officers. Finally, in the light of the debate and discussions to date, I wish to indicate my present thinking as to the need to vary or clarify the existing language of the bill.

1. The investigative powers of human rights officers: The powers of human rights officers are to be found in section 30 of Bill 7, which is similar in its legal effect to section 16 of the current Human Rights Code. Reduced to essentials, these provisions give the commission or its officers the power to enter premises at any reasonable time, without a warrant, to question persons, to require the production of relevant documents and to remove, copy and promptly return documents which are deemed to be pertinent to a particular complaint.

The present section 16 first appeared in the Human Rights Code in 1974, some eight years ago. Prior to 1974, officers engaged in the enforcement of human rights legislation were given written authorization by the Deputy Minister of Labour, under powers granted to the deputy minister by section 9 of the Department of Labour Act, to enter premises at all reasonable hours for the purpose of carrying out their statutory duties. The authorization gave the officer access to records as well.

10:10 a.m.

If the officer was unable to effect a settlement of the complaint, the matter could, in the discretion of the minister, go forward to a commission, which is now called a board of inquiry, which was given the investigative powers of a conciliation board under the Labour Relations Act. That is, that commission or an officer acting on its behalf at that stage, was empowered to enter premises, inspect documents and question witnesses; and the commission itself could summon witnesses and compel the production of documents which it considered relevant to its inquiry.

These powers arose from the combined effect of section 9 of the Department of Labour Act, which was first enacted in 1937, and the original human rights statutes; that is, the Fair Employment Practices Act, 1951, the Female Employees' Fair Remuneration Act, 1951, the Fair Accommodation Practices Act, 1954, and later, the Age Discrimination Act, 1966.

A close reading of the relevant statutes will therefore reveal that since 1951, for over 30 years, human rights officers have had rights of entry and inspection without a warrant and the right to question witnesses, and further, since 1974, with all-party support in the Legislature, the right to require the production of relevant documents and to remove them for copying, provided they were promptly returned to the owner. I should say in passing that I am unaware of any specific allegations that have been made to the effect that these powers have been abused.

2. The investigative powers under Bill 7, their scope and application: First of all, the power under section 30 of Bill 7 of a duly authorized commission employee to enter business premises, as opposed to a private dwelling place, without a warrant is clear. Incidentally, this is a power which has long been accorded to officers under virtually all of the statutes for which the Minister of Labour has been responsible--the Employment Standards Act, the Labour Relations Act, the Occupational Health and Safety Act, 1978, and its predecessor acts, the Industrial Safety Act, the Construction Safety Act and part IX of the Mining Act, as well as the Workmen's Compensation Act and the Industrial Standards Act.

In addition to the power of entry, there is in Bill 7, as there is in the current code, the power to require the production of documents. Apparently some regard this power, contained in section 30(3)(b) of the bill, as tantamount to a power to search and seize without a warrant. I do not believe that is an interpretation that is correct. Where the Legislature clothes officials with search and seizure powers, it does so in very express terms--see, for example, section 22(7) of the Farm Products Marketing Act and section 11(6) of the Securities Act.

I do not believe search and seizure powers can be implied from the wording of section 30 of the bill. Let us assume, for example, that the investigator makes a demand for production under section 30(3)(b) and the demand is refused. If the investigator were to ignore the refusal and to proceed to search the premises for documents, he would, in my view, be exceeding his authority under the provisions of Bill 7 and under section 16 of the current code and might, I am advised by counsel, be liable to a charge of trespass under the Trespass to Property Act, 1980.

What, then, could an investigator do, faced with a refusal to produce documents? He could recommend to the commission the laying of an information under section 30(6) of the bill--a provision, by the way, which is identical to section 16(5) of the current code--charging the respondent with obstruction. I want to point out that such a charge could only be laid with the consent of the Attorney General.

Alternatively the inspector could recommend to the commission that because it was not possible to complete the investigation, the matter should proceed to a board of inquiry, where the question of relevancy of documents or any other question bearing upon the refusal to produce documents could be argued and, incidentally, where rulings adverse to the respondent could be appealed to the Supreme Court of Ontario.

For the reasons outlined, I think those who read a search and seizure power into section 30 are incorrect. However, I wish to make it clear that it has never been my intention nor the government's intention to grant such powers. I will be indicating later in this statement the nature of the clarifying amendments that I am prepared to propose to put the matter beyond any doubt.

Before doing so, however, I think it might be useful to refer to other statutes in which similar investigative powers have been granted in order to indicate the various approaches that might be considered.

3. Investigative powers in other statutes: As I am sure members are aware, there are a great number of statutes, both federal and provincial, empowering inspectors to exercise one or more of the following powers: to enter premises, to require the production of documents, to seize and detain documents, to interview witnesses and generally to carry out their statutory duties, all without a warrant. The statutes to which I refer are either remedial in nature, conferring social benefits or protecting civil rights in the broadest sense, or they are regulatory, establishing, for example, the conditions upon which licences are issued and retained, obligations to pay taxes or fees, to maintain premises in certain states of repair, et cetera.

These statutes may be categorized under three headings, although, as I have indicated, some of them fall within more than one category. First, perhaps the largest group comprises those giving the right of entry into premises without a warrant. Occasionally such a right includes the right to enter even private dwellings as well as business premises. Second are those which accord the right to require the production and in some cases the removal of documents for copying. The third category comprises those conferring the express right to seize or detain documents.

There are variations in the ways that these various powers are defined. In most cases a person exercising the power must, as is the case in section 30 of Bill 7, be authorized by the particular board, agency, commission, ministry or department on whose behalf he is acting. In a smaller number of cases the authorizing body or official must have reasonable cause to believe that a statutory contravention is occurring. Frequently the enabling statute stipulates that it is an offence for a person to obstruct an investigator in the exercise of his powers.

Mr. Chairman, it is no exaggeration to say that there are literally hundreds of Canadian statutes falling within one or more of the categories that I have described. Federal statutes of this sort include the Canadian Human Rights Act, section 35(2), which clothes commission investigators with powers very similar to those contained in section 30 of Bill 7. Identical powers are given to officers under the Canada Labour Code. Other federal statutes, such as the Income Tax Act, section 231, and the Animal Diseases and Prevention Act, section 18, to name just two, allow inspectors a right of entry without warrant in order to carry out their statutory mandates. In the case of the Income Tax Act the additional power to seize evidence is available if it appears to the investigating officer that there has been a violation of the statute which he is enforcing.

Other provinces have similar legislation. For example, sections 97 and 98 of British Columbia's Employment Standards Act allow an authorized officer to enter business premises and to remove employment records in order to make copies. Saskatchewan's Labour Standards Act, section 66, confers similar powers on investigating officers. These are random but, I submit, typical examples of powers commonly conferred by statutes in other Canadian jurisdictions.

I cite these examples in an effort to place this aspect of the matter in perspective. The prevalence of these powers in Canadian statutes reflects well-established administrative law principles which recognize that the powers of entry, seizure and the like depend for their justification on the purpose of the governing statute and the purpose of the power. Whatever may be said about the powers of search and seizure, I submit that the power of entry without judicial authority is well established in statutes that are primarily educative and disciplinary in character as opposed to those where inspections are done for the purpose of detecting offenders in order to launch criminal prosecutions. I believe Bill 7 falls squarely within the former category: that is, primarily educative and disciplinary in character.

4. Proposed clarifying amendments. Until I have had the benefit of hearing all of the public submissions I don't want to present in inflexible detail the precise statutory language that may be desirable to clarify the concerns that have been voiced. However, I can in general terms outline the principles which I think should apply.

10:20 a.m.

I believe the power to enter for the purpose of interviewing witnesses and examining the premises is fundamental to the proper administration of the code. These powers are so central to the enforcement of the legislation and so well established in our statutory approach to remedial legislation that I do not believe they should be restricted other than by ensuring that they can only be carried out by properly authorized officers of the commission. If more stringent restrictions, such as requiring a warrant, were to be imposed in the Human Rights Code it would surely be necessary to develop a logical rationale for distinguishing the code from other statutes in which the right of entry without a warrant now exists.

Do those who express concern, including my friends the members for Scarborough West (Mr. R. F. Johnston) and Riverdale (Mr. Renwick) as well as their leader (Mr. Cassidy), all of whom have indicated their disapproval of section 30 of Bill 7, really believe that it would be desirable to require a labour relations officer who wishes to investigate a complaint of an alleged unfair labour practice under the Labour Relations Act to obtain a warrant before he or she enters the employer's premises for the purpose of questioning witnesses and examining documents?

Would it, in their view and in the view of other critics, be desirable for an industrial health and safety inspector to be required to persuade a justice of the peace of the necessity of entering a place of work to investigate a complaint that working conditions are either unsafe or unhealthy, bearing in mind the fact that a justice of the peace must be satisfied that there are reasonable grounds for believing that an offence has been committed?

Should an employment standards officer be required to obtain a warrant to enter premises to investigate a complaint for failure

to pay equal pay for equal work or the allegation that vacation pay has been denied or, for that matter, to conduct routine compliance audits?

Mr. Chairman, these are not unusual occurrences, as members well know. These and similar investigations take place on a daily basis within my ministry and, in my view, are essential to the carrying out of the various mandates given by the statutes. I believe the same observation applies with equal force to the Human Rights Code.

With these preliminary observations in mind let me summarize the essential features of the clarifying amendments that I am prepared to introduce at the appropriate time.

First, the authorized investigating officer should be given the right to enter premises other than private dwellings at reasonable times and request--and please note that the word "request" is substituted for the word "require"--the production of documents and/or permission to view the premises.

Second, while on the premises the authorized investigating officer should be entitled to interview persons who may have knowledge of the matters raised in the complaint, with the right of the person being interviewed to have his counsel or representative present if he wishes, subject to the right of the investigating officer to exclude from the interview persons adverse in interest to the complainant.

Third, if there is a refusal to produce relevant documents or a refusal to permit a view of the premises, provision should be made for obtaining a search warrant from a justice of the peace upon reasonable grounds for its issuance being shown.

Fourth, if entry is refused, or as an alternative to obtaining a search warrant in the case of refusal to produce documents, the human rights commission should be able to refer the complaint directly to a board of inquiry that would be empowered to give appropriate directions concerning the denial, obstruction or refusal to hear the complaint on its merits and to issue a decision--a decision, I might add, which in both fact and law can be appealed to the Supreme Court of Ontario.

These are four principles that I believe are fair and workable, and I am prepared to support them.

I would like to add a word about the power to question witnesses. It has been suggested that section 30(3)(d) of the bill is unfair and oppressive in that it might deny the person being questioned the right to have his or her counsel or other representative present during the questioning. I sympathize with this concern, and, as I have indicated, I am prepared to introduce whatever clarifying amendment may be necessary to guarantee the right to representation for witnesses. However, I think it is important to understand the history of this particular subsection--because many members here today were involved in the discussions relating to it--and the reason why it has to be carried forward into the present code.

Section 30(3)(d) continues, in slightly altered language, section 16(2)(d) of the current code. In permitting officers of the commission to exclude persons during questioning, the section is directed at a very specific situation; that is, the situation where a person adverse in interest to the complainant insists on being present in person or through a representative during the interview in an attempt to intimidate the person being questioned, and this risk is not a theoretical one. It arises from several concrete situations which occurred prior to 1974, where several respondent employers successfully asserted the right to be present during the questioning of witnesses with consequent intimidating effect. As a result, the present section 16(2)(d) was enacted by the Legislature in 1974 with the support of all parties.

I believe it is extremely important that we continue to guard against this potential abuse. However, as I have indicated, I believe we can do so, at the same time improving upon the existing language by stipulating specifically that the officer's power to exclude extends only to persons adverse in interest to the complainant and not to the complainant's own counsel or other freely selected representative or, indeed, to the witness's own counsel or other freely selected representative.

I know there are other matters which have been identified as being of concern. Among these is the fear that free expression of opinion is somehow abridged or denied by section 12. In my opinion, a plain reading of section 12 makes it clear that it is actions, not opinions, which are restrained. However, I wish to make it clear that I am prepared to introduce any clarifications that are necessary in order to ensure that there is no restriction, actual or perceived, on the expression of opinion.

Those are the matters to which I wish to direct my remarks today. As I have said, they have attracted considerable attention over the summer months. I do not wish to be misunderstood. I do not shrink from controversy, indeed I welcome it. As someone has said, controversy is the essence of politics and its principal attraction as a modern spectator sport. However, we are dealing here with a very important piece of legislation, and I do not think the public interest is served by a one-sided debate.

I must confess it is difficult in the face of shrill and intemperate criticism--not, I hasten to add, from members of this committee--to avoid intemperate rhetoric and response. However, I believe these matters are of sufficient importance that they should be examined dispassionately, rationally and on their legal and social merits. For my part I intend to do my best, whatever the temptations to the contrary, to keep the debate on that plane. Whatever other differences we may have, I am sure all members of this committee will agree on that latter point.

I want to make it clear that the items which I have addressed today should not be taken as an exhaustive list of our concerns or the government's concerns. I have followed the committee's deliberations with great interest and benefit, and when we come to clause by clause debate I will have certain specific proposals to make on several other matters which have been receiving your attention. I believe, however, we should have

the benefit of hearing all of the briefs still to be presented before these other substantive matters are addressed.

Finally, while I am prepared to make reasonable amendments where I am persuaded that the code can be improved, I wish to reaffirm my commitment, and that of the government, to the important substantive reforms contained in the bill, as well as my own unaltered determination to see Bill 7 passed by the Legislature and proclaimed in force as soon as possible. Thank you, Mr. Chairman.

Mr. Chairman: Thank you, Mr. Minister. I do not know whether we want to get into any questions specifically at this time.

Hon. Mr. Elgie: Whatever you wish, Mr. Chairman.

Mr. J. M. Johnson: I think we should have a few comments.

Mr. Renwick: I do not intend to enter into a dialogue of question and answer with the minister at this time. We will have an opportunity in the future. I may say I welcome the statement of the minister. I think it has done a great deal to allay the concerns which I and my colleague Richard Johnston have expressed in discussions, and the leader of my party has expressed as well.

10:30 a.m.

I am always interested in a lesson in jurisprudence, and it has certainly been an illuminating and elucidating one. I do not think that jurisprudence would have assisted anyone, when faced on the doorstep without the benefit of the minister's statement in support of the powers that were granted, to avoid the implications of the provisions of section 30. The clarifications are most welcome. We will certainly study them to see that they do meet our concerns. On first sight, I would say they substantially cover the concerns I had originally expressed about the bill. I am delighted to have the reaffirmation of the minister's commitment and the government's commitment about the bill.

I am also pleased that you had seen fit to comment on section 12. That was a matter I raised yesterday when the representatives of the newspaper associations were here. I wanted that issue clarified. I did not want to allow an attack on this bill to be disguised as an attack on freedom of speech. We appreciate the time and effort and the timeliness of the statement.

Hon. Mr. Elgie: Thank you, Mr. Renwick.

Mr. J. M. Johnson: Mr. Minister, I too would like to join Mr. Renwick in congratulating you on your presentation. You have cleared up a lot of concerns that I personally and I am sure most of my colleagues and indeed many of the public had. It is encouraging to know the presentations being made here are being read by members of the ministry and brought to the attention of the minister. It makes our exercise here more meaningful to know that the input is reaching the right level. I think the problem possibly has been a matter of clarification. You have certainly

zeroed in on a couple of the major concerns with the bill, and you are prepared to make the appropriate amendments. I hope you will continue to follow this practice. In doing so, hopefully we can come out with a bill that is fair and reasonable to all parties involved in these basic human rights.

Hon. Mr. Elgie: Thank you, Mr. Johnson.

Ms. Copps: I have a couple of concerns about the changes as they would come forward. One of my concerns is that it seems you are at this point allowing the witnesses involved some freedom as to whether or not they will open their books to you and as to whether or not they will be investigated. When an officer arrives at the door and asks that he be allowed to enter and look through a document, will he or she inform the witness he has a right to refuse that aspect? Will that be a paramount part of the legislation you will be introducing?

Hon. Mr. Elgie: I am quite willing to hear comments and remarks about that, which is exactly why I did not make inflexible amendments today and submit them to you. The intention is very clear. We want to recognize the right of someone who has been complained against to say, "You cannot look at my documents; I consider them privileged." If he or she likes to do that, then there are options available to society to enable the securing of information that is absolutely necessary to the investigation of a complaint.

Ms. Copps: I would like to see something brought into the legislation that would follow the Miranda decision in the United States where the person who has been complained against would be informed of his or her rights in that regard prior to any injury or any seizure.

I also have some concern over point four on page 19 where you say that if entry is refused you have a potential of two alternatives. One is obtaining a search warrant, and the second is referring the complaint directly to a board of inquiry. My understanding of the legislation as it is proposed is that the introduction to a board of inquiry is only allowed when there has been substantial evidence to show there has been an infraction of the code. In this case, suggesting you would refer it directly to a board of inquiry gives me some concern about it, because a person is exercising what is deemed to be personal freedom in not allowing entry. The complaint is then referred directly to the board of inquiry; that is, he is guilty until proven innocent. I wonder if in the legislation you may propose, you might strike out that second option of turning it directly to the board of inquiry and take the simpler route of obtaining a search warrant, which would solve the problem all the way around.

Hon. Mr. Elgie: Ms. Copps, I hope you will take some time to analyse the matter carefully. If you read the Provincial Offences Act, which gives the justice of the peace the capacity to issue a search warrant, you will realize there have to be reasonable grounds to show not only that there is a valid complaint but that there is evidence in the possession of the employer, for example, that will substantiate that complaint.

I am saying, clearly, if the commission has an option and has reason to believe there are documents, then it should go the warrant route. But if you are suggesting that information that is solely and totally in the possession of an employer, or whoever, should never under any circumstances be made available to anybody to peruse even though that perusal will be subject to the ordinary rules of evidence and subject to a right of appeal at any stage of the procedure--surely you are not suggesting the whole process should grind to a halt. That is what it would do if you do not give those sorts of options.

In building in those two options we are legitimately trying to recognize people's rights to have counsel, to have access to the courts to appeal decisions that may have been made, or to appeal the decision of a commission to pass it on to a board of inquiry on the grounds that they did not have evidence to justify it. There are so many things built in there to protect individuals. I hope that after careful consideration, Ms. Copps, you will agree those are the only two options we have.

Ms. Copps: My understanding is that the process that would result in obtaining a search warrant also applies to a board of inquiry, in that a board of inquiry in normal circumstances is not called unless there is some evidence of an infraction of the code. Therefore the same doubts would apply either to the situation of the search warrant or a board of inquiry. How can you call a board of inquiry when you have received no information to date to substantiate the calling of a board of inquiry?

Hon. Mr. Elgie: If you read section 33, you will see it says that if it appears to the commission that the procedure is appropriate and--reading it broadly--that the evidence they have in their possession warrants an inquiry.

Ms. Copps: If they have evidence in their possession that will warrant an inquiry, surely they will have evidence in their possession that would also allow the production of the search warrant. I find there is a basic incongruity to say that you have enough information to call for a board of inquiry and yet not enough information to require a search warrant. I think that is an area that should be elucidated.

Hon. Mr. Elgie: I think what you are not reading is the second part of that, which says that the board of inquiry would be empowered to give appropriate directions concerning the denial, obstruction or refusal to hear the complaint on its merits and issue a decision. Clearly, there will have to be some alterations in other wording of the code in order to allow a board, in full public view and with rights of appeal from their decision, and the right to counsel and all the ordinary rules of evidence, to have records inspected.

I have to tell you, in all honesty, that probably is the most secure type of amendment in terms of any other legislation that I have been able to see anywhere in this country, in terms of protecting people's rights.

Ms. Copps: I do not want to engage in a debate here because I don't think that is a function of this committee. However, my reading of that section where you say that the commission should be able to refer the complaint directly to a board of inquiry--which implies in my mind some bypassing of the normal pursuit of the complaint--which would be empowered to give appropriate directions concerning the denial, obstruction, et cetera, or refusal.

You are talking about obstruction here when in the last paragraph you have said the person who is a witness or the person who is an employer is allowed the privilege of denying you access. In the next page you are talking about obstruction. I think there is something there that should be cleared up when the legislation is introduced in its final form.

Hon. Mr. Elgie: It is a question of access without due process. We are building in due process here so that if someone feels his documentation is privileged, or for any other reason should be kept private, then he can say so. If he does not agree with the board of inquiry, he can appeal that decision. I think that is an immense step forward in protecting individuals' civil rights, not only as a general principle, but in comparison to all other statutes that I have ever seen.

10:40 a.m.

Ms. Copps: I can only say that if you have enough evidence to warrant a board of inquiry then I think the most logical and the best route to ensure individual liberty would be to demand a search warrant.

Hon. Mr. Elgie: I hope when we get around to discussing it, you will suggest what we might do if it is not possible to get a search warrant and you still have a problem.

Ms. Copps: I am sure there are many other areas of jurisprudence where people cannot get a search warrant. That is one of the fundamental rights that is built into our democratic process.

Mr. Chairman: I think that surely will come up when we get into clause by clause. We are not going to resolve anything further this morning, I am sure.

Mr. Eakins: I just want to say that we appreciate the minister's statement. We will be reviewing the content of it very soon. I think, however, the minister will agree that this statement was necessary in view of the very grave concerns that have been expressed by some very large bodies in the province, especially yesterday morning by the various police associations of Ontario, the police chiefs and also the Ontario Provincial Police.

Hon. Mr. Elgie: I think it is fair to say, John, that there are many misperceptions about numerous areas of the code. Were we to start discussing them today, we could go on for quite a while. But I do agree with you and I thank you for your remark that there were some that were absolutely necessary to clear up. That is why I came today.

Mr. Chairman: Thank you very much, Mr. Minister. From the Toronto Board of Education, we have Robert Spencer.

Mr. Spencer: Mr. Chairman, our delegation is quite large. I wonder if we could use these two seats for our officials.

Mr. Chairman: Yes.

Mr. Spencer: I would like to introduce our delegation, which is relatively large. We have a short brief but each trustee has a part of that brief to read. The associate director, Ron Halford, is sitting here in front of me. The race relations adviser for the Toronto board, Tony Sousa, is on this side and then, beginning from the right, we have trustee Joan Doiron from downtown ward 6, trustee David Moll from the east end of the city, ward 9, trustee Baer Weatherup from the centre west of the city, ward 2; and trustee Fiona Nelson from the north centre of the city, ward 5. Our group will begin with a presentation, page one.

Mr. R. F. Johnston: Is there any symbolic reason why the north of the city has been left out--10 and 11?

Mr. Spencer: Trustee Nelson actually represents the north area. Our city is divided into four areas, and we have representation from all four areas.

The Toronto Board of Education operates a system of 165 elementary and secondary schools, attended by over 80,000 pupils and staffed by almost 5,000 teachers and principals and 4,000 nonteaching support staff. Our continuing education program has approximately 30,000 students yearly and employs about 450 additional teachers.

As a school board we believe that the schools not only communicate objective knowledge and techniques, the usual three Rs, but also reflect society. We feel that the education system bears an important responsibility for furthering human rights. Through our school community and board policies the Toronto Board of Education has consistently striven to promote better understanding between people and to teach our students and staff about the value of human diversity. It is therefore important that we who have the responsibility for education in this area respond to a bill that promises to give all people equal rights and opportunities and respect for their dignity and freedom.

The Toronto Board of Education is glad that the provincial government is enlarging the current Ontario Human Rights Code. However, we feel there are still areas where there is some inadequacy, and we would like to address these areas specifically in the order in which they appear in the bill.

In part I, the Toronto Board of Education supports the recommendations of the Life Together report, especially the proposed revisions dealing with the specific grounds on which discrimination would be prohibited. In the proposed Bill 7 we note the lack of inclusion of sexual orientation, which Life Together has included. The Toronto Board of Education, as some of you will be aware, has debated this issue. We have attached Appendix A,

which is a copy of our board's policy, which was passed by a very large majority of the board members.

When the subject was being debated at the board, board members heard from over 50 individuals and groups. The majority of those groups spoke in favour of inclusion, and they ran the spectrum from grandparents, theologians, politicians and parent groups to noted Canadian authors, academics and psychologists. A respected Canadian theologian stated at the meeting that, while the question of homosexuality may be a debatable moral issue, the churches collectively agree that homosexuals have human rights which must be protected.

We do not feel that giving rights to gays and lesbians is infringing anyone else's rights and freedoms. Quebec has passed similar legislation banning discrimination on the basis of sexual orientation; the cities of Toronto, Windsor and Ottawa have passed similar resolutions. Nowhere have we heard of abuses that have resulted from these resolutions or legislation. The granting of these rights gives homosexuals the right to live as human beings within the law.

Our officials are prepared to answer any questions on the implementation of that policy, because we understand that at an earlier delegation there were some questions asked. So we are prepared to answer questions, but we will not go into that at this point.

I would like to introduce trustee Joan Doiron to deal with the next two sections: sexual harassment and age.

Ms. Doiron: Thank you, Mr. Chairman. Section 6(a) on sexual harassment is the first one that I would like to comment on. In your bill you say that "Every person has a right to be free from (a) a persistent sexual solicitation or advance made by a person in a position of authority who knows or ought reasonably to know that it is unwelcome..."

Our problem is with the word "persistent." We feel that the word "persistent" should be clarified or removed. We are concerned about who would determine persistency and how it would be proved. A section should also be included to require all companies and organizations to formulate a general policy on this issue and make this known to all staff and employees.

10:50 a.m.

Second, our part two speaks to your section 9(a) on age, which states, "In part I and in this part, (a) 'age' means an age that is 18 years or more and less than 65 years." Of course, that directly affects us, and in this statement we are supporting the position that I think your committee has already heard from Justice for Children. We feel this section fails to recognize that there are a large number of young people out on their own between the ages of 16 and 17. If the code does not include this group it will sanction discrimination against them and will deny them equal access to services, goods, facilities, accommodation and employment. We feel it is unfair to give a young person the right

to withdraw from parental control at 16 and not give the person the protection available to all persons in society.

We also question the age limit of 65 years. Are people over 65 not in need of protection? Can they be denied access to services, goods, facilities and accommodation?

As I mentioned, the Justice for Children brief goes on in some detail that, of course, we would support on the question of 16 and 17 year olds.

Mr. Spencer: Part II will be dealt with by trustee Nelson, residential accommodation.

Ms. Nelson: Mr. Chairman, the Toronto Board of Education is concerned about section 19(4), which reads, "The right under section 2 to equal treatment in the occupancy of residential accommodation without discrimination because of family is not infringed by discrimination on that ground where the residential accommodation is in a building, or designated part of the building, that contains more than one dwelling unit served by a common entrance and the occupancy of all the residential accommodation in the building or in the designated part of the building is restricted because of family."

I would like to give you a wee bit of the history of the discussion at our board. On March 26, 1981, the Toronto Board of Education decided to write to the Premier of Ontario (Mr. Davis) and the Minister of Labour to advise them that it is in support of the recommendation contained in the human rights commission report Life Together, which prohibits discrimination against children in rental accommodation. Later, on July 30, the board of education endorsed a brief from Child in the City regarding the rights of families with children to equal access to housing, and that is Appendix B in our brief. This brief is being presented to you by the Child in the City Program, University of Toronto, on their own behalf.

We find that adult-only housing is anti children and families who need accommodation. Our board has consistently advocated the provision of affordable family housing in the city to help stabilize downtown neighbourhoods. Manitoba, Quebec and New Brunswick have already enacted protection against adult-only restrictions, and we would urge Ontario to do likewise by removing section 19(4) previously cited.

We feel that at the moment families are under tremendous pressures; marriages are very fragile and housing is a major stress in this. We find that the best way to ensure the rights of children to all the protections they require is for us to have as much support for the family as possible, and we feel that the deletion of this section would help to provide that support. That's why we are urging that deletion on you today.

Mr. Spencer: Trustee Baer Weatherup will deal with part III.

Mr. Weatherup: I would like to speak to section 26 in particular. That's where you deal with public education. It says in two clauses, (d) and (h):

"It is the function of the commission,

"(d) to develop and conduct programs of public information and education and direct and encourage research designed to eliminate discriminatory practices that infringe rights under this act;

"(h) to promote, assist and encourage public, municipal or private agencies, organizations, groups or persons to engage in programs to alleviate tensions and conflicts based upon identification by a prohibited ground of discrimination."

I guess we are concerned about clauses (d) and (h), which deal with the functions of the commission to promote public education programs to eliminate discrimination and alleviate tension and conflicts based upon identification by a prohibited ground of discrimination, because the Toronto Board of Education has an equal opportunity office to do just that, and we look forward to continued co-operation with the commission on joint educational projects.

An example of this, I think, are some actions that are being taken by our race relations department in preparation of a pamphlet which I will hand around as a sample. It deals with the board's position on the Ku Klux Klan, which is a problem right now in the Toronto system. I will hand that around for people to look at.

Trustee David Moll, part IV, the orders of boards of inquiry and part V.

Mr. Moll: Mr. Chairman and members of the committee, I will read part IV, orders of boards of inquiry, and part V. The Toronto board has a number of concerns about section 38(3), orders of boards of inquiry, which reads: "where the board of inquiry, after a hearing, finds that a right of the complainant under part I has been infringed and that the infringement is a contravention of section 8 by a party to the proceeding, the board may, by order..." et cetera.

"(3) In addition to the powers conferred by subsection 2, where a right under subsection 1 of section 4 is infringed on the ground of a handicap, the board, in addition to any other order, may make a finding as to whether or not the equipment or the essential duties of the employment could be adapted by the party who is found to be a contravener to meet the needs of the person whose right is infringed and where the board makes the finding, the board may, unless the costs occasioned thereby would cause undue hardship and subject to the regulations, order that the party take such measures as will meet such needs as are set out in the order."

The Toronto board finds that this section is in apparent contradiction with section 16, which states: "A right under part I to nondiscrimination because of a handicap is not infringed by

discrimination for the reason that in the particular circumstances the handicap renders the particular person incapable of performing the essential duties attending the exercise of the right." We agree that no one should be disregarded simply because he or she is handicapped. However, to delegate a board of inquiry with the power to change the essential duties of a teacher, for example, may contradict the essential duties of teaching as set out in the Education Act.

We are also uncertain about the definition of handicap and whether it should include mental disorder or learning disability. The meaning of "essential duties" and "incapable" are undefined and therefore are subject to different interpretations. How do we protect the rights of the handicapped, or people who have a previous history of a mental disorder, and the rights of the nonhandicapped?

We have a concern as well with regard to part V of the act, section 43(c), which reads: "In this act, 'person,' in addition to the extended meaning given it by the Interpretation Act, includes an employment agency, an employers' association, an unincorporated association, a trade or occupational association, a trade union, a partnership, a municipality and a board of police commissioners established under the Police Act."

We would support the recommendation of Justice for Children, which was referred to earlier in our presentation, but the definition of "person" in section (c) should be amended to add the words "human beings" of any age. Again I would refer you to Appendix C where it extensively quotes from Justice for Children. This, we believe, would clarify the status of children.

Mr. Spencer: In conclusion, Mr. Chairman, I would like to thank you very much for allowing us to make a presentation and again indicate that both our trustees who have dealt with particular sections of the presentation and our officials are prepared to answer questions on any of the areas that have been commented on this morning.

Mr. Chairman: Thank you very much, Mr. Spencer and the other members of the board. Are there any questions?

11 a.m.

Mr. Renwick: Mr. Chairman, I do appreciate the opportunity to have heard this submission. It covers a number of points, but I do not want to engage in a seriatim discussion of each and every one of them.

I am particularly interested, however, in the question of the inclusion in the code of the prohibited ground of discrimination, sexual orientation, because I tried to follow in the press the evolution over time of the policy which you have submitted with your brief. Obviously it was a matter of extreme difficulty for the board to deal with. I was very much interested in looking at the votes as they were taken and the way in which this policy reflects a substantial majority of the board, representative across the city.

Would you please help me and perhaps the other members of the committee as well in the evolution of your policy, having particular regard to item (b), that the board will not countenance the proselytization of homosexuality within its jurisdiction? That is one of the principal reasons that is given for the argument that we should not include it in this bill.

Mr. Spencer: This question is one that involved the activities, I think, of the majority of the trustees for most of the last term. It seemed that every time you turned around there was a presentation.

I would be reluctant to try to go through the history since the beginning of 1979. But on the question specifically with respect to proselytization, I think our associate director and our race relations adviser have some specifics that may be of interest to the committee. If more is asked, we will go further.

Mr. Halford: I think, as Mr. Renwick has noted, we had some difficulty arriving at the final policy because there was probably a good deal of misunderstanding in the eyes of the public about what we were eventually trying to get at. Mr. Renwick pointed out section (b), very rightly, as the place where we had to make a very public statement about concerns that the general public had.

We started out, and we hope we ended, with a policy that was really related to employment. But there seemed to be a concern that there were side issues; that we were into the matter to curriculum for example; we were into the matter of the way in which employees might handle themselves within our classroom settings. Section B of our policy tried to address that. I know it is a very brief statement but it was one that was meant to sum up the board's position on it; that the board would not tolerate activity of this sort, as described in the phrase, proselytization within the classroom.

In order to enforce the board's own policy, the board has to have some implementation policy. Here, I think, is perhaps one way to answer your question. If members of the public or members of the board's staff should have some concerns about the activities of its own employees either in the classroom or in the nonteaching situations, then we would apply our policies. In the classroom we have a procedure that is called standard form 45, which we have been updating recently. The last form we had was 45(a), dealing specifically with some matters around the activities of staff.

If there should be a complaint from staff or the public, it would be investigated under our policy. It could lead to suspension of an employee's contract; it could lead to the termination of an employee's contract. We feel that with those internal arrangements, we have managed to satisfy the concern that was out there in the public.

It certainly was the concern that took a great deal of time. I think the board wrestled with that for a long time before they came to the policy that you see here. I hope that has gone some way towards satisfying your question.

Mr. Renwick: Perhaps, Mr. Chairman, I could address one further question on this particular area. We have had raised with us the idea that it would create a rather significant conflict, I think it's with section 44 of the Education Act, which sets out, perhaps in rather archaic language, the duties and obligations of a teacher, if we were to include in this bill the prohibited ground of sexual orientation coupled with the later section of the bill, which in certain circumstances overrides the provision of any other act. That's the argument which has been put to us as recently as yesterday but on other occasions as well.

Mr. Halford: Mr. Chairman, could I draw the attention of the committee to one sentence we have in our brief in that section? It gives our reason for quoting one of the delegations we had at the board. It is on page two, paragraph three. While the question of homosexuality may be a debatable moral issue--which I think is the one you are referring to if you are looking at the Education Act and the question of what must be taught in the classroom: that is the debatable issue there--the board was looking at the rights and protection of all our employees. We felt that this was one of the issues on which we had to arrive at a solution, and we felt that we could separate the two. Perhaps our way of doing it was section B, again, of our policy. We tried to separate what the teacher was required to do in the classroom under the Education Act from the rights that the person should have outside the classroom and as an employee of the board, whether teaching or not.

Mr. Spencer: Mr. Chairman, if I may add to that, trustee Nelson was the chairman of the board during that period and she would like to make a small remark, if it's possible.

Ms. Nelson: Mr. Chairman, this policy on page 10 of our brief was developed by a group of trustees in consultation with the board solicitor, because it was obvious that we needed a statement that would both define the terms under which the board was operating--allay public fears such as the one mentioned by Mr. Renwick--and have the support of the board and its staff. It was felt that this did do this.

We heard from a large number of clergymen, in fact, who are well aware of the kinds of concerns that have been raised here and who felt that there was a significant human rights issue as well as a moral issue involved and that there was a possibility of separating them. We feel that this statement in fact met those fears and has in fact quieted the issue to the point where we have not heard it so far this year.

Mr. Eakins: Mr. Chairman, my question is really a supplementary. Would it be all right to ask it rather than as a separate question?

Mr. Chairman: If Mr. Riddell has no objection I would say go ahead.

Mr. Eakins: Following Jim's comment there, you have referred here to a respected theologian who stated at one of your meetings that the churches agree that homosexuals have human

rights which must be protected and promoted in society. I wonder, concerning the broad statement of churches, were these individual presentations or do you have support from, say, the Toronto Council of Churches or the Canadian Council of Churches as such? Were they individual presentations when you say "the church?" Do you have something documented with the board from a broad association of churches?

Mr. Spencer: Mr. Chairman, in answer to that we could provide the documentation from the specifics. It was both councils and individual churches. There were obviously some other individual churches that were quite upset and didn't see the separation. Again, this was an extremely controversial issue, so I think that if Mr. Riddell would like to dig into it a bit deeper we would be quite pleased to provide the specifics. The theologian teaches at St. Michael's College.

Ms. Copps: (inaudible).

Interjections.

Mr. R. F. Johnston: Get your labels straightened around.

Mr. Chairman: I thought you were prejudging Mr. Riddell's question. He is next.

11:10 a.m.

Mr. Riddell: I think maybe there's more fact than fiction in that. I just want to follow up on the comments made by Mr. Renwick and Mr. Eakins by asking if you agree that this bill should take supremacy over the Education Act?

Mr. Spencer: I think it must. It should take supremacy over the other act.

Mr. Riddell: Then should we pull--and if it is section 44, I'm not sure; I used to know what it was; I was a teacher at one time--"and to inculcate" and on and on and on, out of the Education Act?

Mr. Spencer: I believe that, as trustee Nelson and associate director Halford said, we can develop that separation, and one of the advantages that we as a delegation have is that the wording is really up to the government and the members of the committee. I think that separation can be developed, and over the two years of debate at the board of education I think we were able to do that. It was a very sensitive issue, and it also was an all-party debate. We have had many conversations on this question. To try to develop the separation itself was difficult. I believe you can do that and leave the "inculcate by precept and example the principles of Judaeo-Christian" and so on. I believe that can be left in the Education Act, this bill can take supremacy and we can still operate the schools.

Mr. Riddell: Some reference was made to the activities within the classroom. What about the activities outside the classroom but within the confines of the school? I am thinking now

of a school dance where maybe a homosexual teacher has been asked to supervise and he brings his boyfriend or she brings her girlfriend. They get out on the dance floor and they're dancing together, and the children take a look at it and say, "Well, you know, our teachers are supposed to have a certain amount of influence over our lives, and I guess if they can do it we can do it." Is there some influence over the children, or is it going to be left strictly to the parents to say, "Well, this is not really the normal thing to do"?

Mr. Spencer: I think that probably calls for two answers. Our response is that in terms of promotion and position a teacher operating within a school function, like a school dance, would be promoting an alternative lifestyle if he did that, and so it would be covered under (b).

But we are really very loath to get into comments on what happens completely off the school property. I think that was the other difficulty in operating the obverse of this policy, which was recommended by some of the groups making the other presentations: Do we in fact take on the role of inspecting the private lives of teachers and board employees? I think even people who were initially very nervous about the policy saw in the end that that just would create much more chaos than this type of thing.

Mr. Riddell: I wouldn't expect you to, and that wasn't my question. I was still talking about within the confines of the school and school activities. Heavens to Betsy, these young people, my own sons and daughters, can come to Toronto and simply walk down Yonge Street. You are not going to conduct somebody's private life. There is no question about that. But as a parent I am still a little concerned about such activities within the school. But that's my own personal opinion.

Let me get on to another matter here: personal harassment. In my day we use to call it harassment. Now, talking to teachers, what is it? Is it harassment or harassment?

Mr. Halford: As a former English teacher, Mr. Chairman, I would think either one would be acceptable anywhere from Arnprior to Windsor.

Mr. Riddell: All right. So you would like to see "persistent" withdrawn. I'm an employer. My secretary comes into my office and she has a very low-cut dress on. And she seems to think that I am looking at other than her face, and maybe by human nature I am looking at other than her face. Do you mean to say that she should be able to take me to the human rights commission? If this were repeated time and time again then she might have grounds to take me before the commission.

Mr. Eaton: You should change her.

Mr. Riddell: But maybe she doesn't like me and she sees that I'm looking at other than her face, and she says, "Boy, I'm going to take him to the human rights commission." Do you not think there is room to leave that "persistent" in there?

Mr. Spencer: I think the question of thoughts is one that was dealt with in a book called 1984. I would hope that the government is not in any way interested in dealing with the thoughts of any individual in this province. I am absolutely convinced that people who have power over other people, employers over employees, should restrain the use of that power. Our major concern here is with either removal or definition. I can certainly see from what Mr. Riddell is saying that there needs to be a much more explicit definition so that the code can operate in this area.

This area also would apply, by the way, to a male-male or a female-female harassment. I think it helps to explain and justify our earlier position. This extremely thorny area does need to be dealt with by the committee because, again, it would help us in the operation of our schools if we knew what you meant by "persistent." If you do not mean persistent, I have a problem with it. What is an individual case of harassment? You have hit a touchy point there.

Mr. Riddell: Finally, on accommodation, I would hope that you would still be prepared to recognize that there is a need for senior citizens' housing. I do not represent an urban area; I represent a rural area. We have made tremendous strides over the last 10, 15 or 20 years in getting housing for senior citizens. I hope you are not advocating that we start putting families with children into senior citizen housing.

Ms. Nelson: That is not our intent at all. In fact we are quite specific about certain kinds of housing, such as housing for senior citizens and for types of handicapped people, having some form of exclusion. What we are saying is that at the moment there is such a strong feeling in society against children, as if they are always noisy, dirty and vandals. Children do not go to discos. They do not go to pubs. They do not create riots at soccer matches and yet we do not have those kinds of exclusions against people in housing.

I think we just have to be a lot more careful about supporting families, and where it makes sense, as you mention it, obviously something specific be said. But I do not think we should damn all children out of hand, which is what a lot of the present feeling in society seems to do.

Mr. Eaton: I would like a supplementary on that. At the same time you are trying to protect the rights of the children, certainly there are people who are not senior citizens but who want the right of privacy with no children around them. How do you deal with that? You are taking that right away from those people to protect the rights of children in another instance.

Ms. Nelson: But no one has the right, I think, to have their rights take supremacy over others to that extent.

Mr. Eaton: But that is what you are doing in reverse. You are putting the rights of the children over the rights of the individual who wants to be in quiet accommodation without children around.

Ms. Nelson: As a former teacher, there are a great many more well behaved children that I am aware of than well behaved adults.

Mr. Eaton: I am not saying that. I am not criticizing that. I have four kids and a couple of grandchildren around home lots of time. But there are people who do not want that. They want the right to have that privacy of their own.

Ms. Nelson: I think those difficult situations can easily be dealt with under the Landlord and Tenant Act. I do not think there has to be an exclusion of families to accomplish that.

Mr. Chairman: I think Ms. Nelson has made her point. We have two or three more who wish to speak, and we are under some time restraints.

Mr. J. M. Johnson: On page two--this was referred to by Mr. Eaton and Mr. Riddell both--with regard to a respected Canadian theologian, who stated "...that while the question of homosexuality may be a debatable moral issue, the churches agree that homosexuals have human rights which must be protected and promoted in society." When you read the brief I believe you deleted "and promoted." Is there a reason for that?

Mr. Spencer: That is correct. In the preparation of the brief, everything goes through a lot of stages of typing and discussion and that was deleted. Then when it was in front of us this morning, I just read it as we had agreed. There may have been some confusion between the antecedent of "promoted." It was very clear that protecting and promoting rights is what we were intending. However, we were concerned that it might be misread.

11:20 a.m.

Mr. J. M. Johnson: Yes, it was misread. I have another question. This relates to the point Jack raised in determining persistence. If you asked the question who should make that determination, then the next would be a question in reverse. What is an advance and who would determine what an advance is? Would an invitation to dinner or lunch be considered a sexual solicitation or advance? It could indeed be such.

Mr. Halford: We are looking at this problem now because we are, as an organization, trying to arrive at our own internal policies through our equal opportunity office. I can understand the difficulty of your question.

I think it would probably be a matter of the employee who made the complaint to describe what was to be the reason for that invitation. It would be a very difficult question. I don't think the invitation in itself would be harassment, but if it were very obvious that there was some power being used--and I think that is why you are very wise to have the question of the authority figure in there--if that were being used as an abuse of authority, then I think you have harassment, and it is a very difficult problem.

Mr. J. M. Johnson: I really didn't think you could give us an answer. Section 6(a) creates a great deal of difficulty for everyone. We all know what we want to do, but we don't know how to do it. The wording has to protect both sides and how you do it, I am not sure. If you do come up with any suggestion, send it to us.

Mr. Halford: We are working out a procedure which may allow people to talk together about the situation before it escalates. We are hoping that will solve a lot of the problems.

Mr. Spencer: I did want to mention under this section, we had intended to include a remark with respect to abusive language. I am hoping that will be clarified as the bill comes out, to deal with the generic term "he," "she" or some other form.

Mr. Chairman: Mr. Johnston and Ms. Copps are next. We are under some time restraints here.

Mr. R. F. Johnston: I have just one question, and it is a factual question. I don't know who could best answer. It has to do with the kids between 16 and 17 who have left home and are out on their own. As you say, they have the right to drop parental control, but they don't have any of the other protections that adults would have under this act.

How many kids are there like that in the jurisdiction of the Toronto board? We got the idea from Justice for Children that they see a fair number of them, but I was wondering if, from the board's perspective, you have any idea how many of those children you have under your jurisdiction?

Mr. Spencer: We have had a quick consultation here. If it would be agreeable, we can try to provide a ball-park figure on that number. We know they do exist. We can get some sense of it from the child welfare rolls, but it would take a bit of time. If your hearings are going on, we can provide that.

Mr. R. F. Johnston: I would appreciate that.

Ms. Copps: I have a couple of questions on the issue of age. Do you have any feeling about lifting it over the age of 65? You don't address the issue of employment when you are talking about nondiscrimination for people over the age of 65, and I notice that in your own regulations you have a compulsory retirement age of 65.

Mr. Spencer: You have some very astute committee members. One of the reasons we are very pleased that you are dealing with this overall issue is that our board policy, which has developed over many years, does not deal with the issue of people over 65 in any other way than to say that employees must quit at age 65. We just raised the question. We have not dealt with it collectively.

Ms. Copps: The other question is just a concern you raised over section 38(3). It seems to me that there is a distinction there between the handicap rendering the person incapable of the essential duty and another to pass the physical

or equipment barrier related to the job. I don't see the discrepancy, and I just wondered. You went on at fairly great length with respect to that.

Mr. Moll: I think the concern, Ms. Copps, is that the plain reading of the subsection of the act as it presently stands, about four or five lines down, indicates that, "the board... may make a finding as to whether or not the equipment or the essential duties..." I think that is really the point there. Can the board of inquiry determine what the essential duties of a teacher are, or is it decided by the Education Act? Our concern as set out there is that it is perhaps fair to say that while we would see this act as taking precedence over other provincial legislation, we would have some concern over the redefining of the essential duties of the jobs of our employees by a board of inquiry in this area.

Ms. Copps: I guess it is a question of the word "adaptation" rather than redefining. I think that is where maybe the confusion comes in and we should possibly clarify that. I think the sense of adaptation was intended to be more in the physical sense of adapting surroundings involved with the essential duties of the job.

Mr. Moll: It may well be.

Mr. Brandt: Can I make one comment from the standpoint of the Ministry of Labour? It would be well within the board's prerogative to define what those essential duties would be. The main issue we are concerned about is that it be built into those essential duties, as described in whatever the board's language might be, that it not be discriminatory. That is what can happen with respect to some employment agreements. We have seen instances of this.

It is well within your prerogative, as it would be with a police officer who was being hired, which is an example of a question that came up yesterday. You can define those parameters. As long as they are not discriminatory in their actual implementation, they can be as widesweeping as you would want them to be and as all-inclusive as you might want them to be. There are no limitations there.

Mr. Chairman: There is some concern, though. You would agree with that.

Mr. Brandt: I made that point for clarification because I think there are concerns being expressed only in the broad definition of essential duties. You can define what those might be in your own language.

Mr. Chairman: Thank you very much, Mr. Spencer, and members of the board and staff. We appreciate very much your taking the time to give us some input this morning.

Mr. Spencer: Thank you very much. As soon as we can, we will provide you with the rest.

Mr. Chairman: Next we have the Canadian Union of Public Employees, Ontario division. Terry O'Connor is here, along with others.

Ms. Nicholson: Before I start my presentation this morning, I will introduce you to the committee I have with me. I am Lucie Nicholson. I am the president of the Ontario division of the Canadian Union of Public Employees. On my far left is Farida Shaikh, who is our equal opportunity officer. On my immediate left is one of the members of our Ontario division board, our secretary-treasurer, Terry O'Connor, who is an ordained deacon in the Catholic church. On my right, I have Iain Angus who was an MPP in the House here. One of his last official acts was to sponsor an act to amend the Ontario Human Rights Code in 1977, a few minutes before the House was prorogued.

For those of you who are not aware of the Ontario division of the Canadian Union of Public Employees, we are the constitutional body within our national union and we are authorized to formulate and implement provincial policies. We have 267,000 members, which makes it the largest trade union in Canada. Of those, approximately 108,000 members live right here in Ontario.

Our members work for boards of education, municipalities, hospitals, universities, nursing homes, homes for the aged, electrical utilities, Ontario Hydro, voluntary social agencies, welfare agencies, libraries and the CBC. We have centres in children's institutions.

11:30 a.m.

Before I present our brief to you this morning, I would like to say that we welcome the comments made by the minister today as they relate to the changes in the act. Particularly we welcome the changes relating to access without warrant and the right to have legal counsel or some other kind of representative in attendance during questioning. We had intended to raise these matters as an adjunct to our presentation today.

Mr. Chairman, we are all brothers and sisters, part of one global human family. When anyone anywhere is exploited, unjustly prevented from participating fully in society, or deprived of their rights and the opportunity to experience and express their full human potential, we all suffer a loss to our humanity. When any one of us is freed from the bondage of inhumanity, we are all enriched. The essential dignity and rights of every individual person are intrinsic to their position as members of this human family.

The United Nations Universal Declaration of Human Rights states that all human beings are born free and equal in dignity and rights. The Canadian Human Rights Act states that every individual should have equal opportunity to make for himself or herself that life that he or she is able and wishes to have consistent with his or her duties and obligations as a member of society without being hindered in or prevented from doing so by discriminatory practices.

The labour movement has historically fought against discrimination and prejudice. Countless resolutions have been passed, policy papers have been written, briefs have been presented and action programs have been developed. Our annals show many battles engaged and won. We have gone a long way towards universal access to education. We have rid our country of the inhumanity of child labour.

Governments have been persuaded to provide old age pensions so that our senior citizens can live out their years in dignity. We have fought for minimum wage and employment standards laws, medicare and industrial health and safety legislation. In fact, the very right to organize into unions has been a battle to gain for individuals the respect of their employers and justice in the work place.

Despite all these efforts, for many people human rights remain little more than illusion and rhetoric. The Ontario Human Rights Commission, in 1977, produced *Life Together*, a report on human rights in Ontario. This report was the culmination of a review of the Ontario Human Rights Code that included 17 public hearings throughout the province and received 334 written briefs and presentations. Research and background studies were undertaken of legislation in other countries and provinces.

This report contained 97 recommendations. One recommendation for revision of the Ontario Human Rights Code would have spelled out that discrimination shall not take place because of race, creed, colour, nationality, ancestry, place of origin, age, sex, marital or family relationship, physical disability, criminal record and sexual orientation.

The government of Ontario gave first reading to Bill 209, an act to revise and extend Protection of Human Rights in Ontario, on November 28, 1980. This has subsequently been given first reading in the Legislature as Bill 7.

We wish to draw attention to four recommendations from the report, *Life Together*, that have not been adequately addressed by the proposed legislation. These deal with freedom from discrimination for political beliefs, for family relationship, criminal record and sexual orientation.

On political belief, from recommendation 71 from *Life Together*: "As a matter both of principle and of public education, as well as of ensuring the future security of political liberty in Ontario, the commissioners recommend that the protection of the Ontario Human Rights Code be extended to include freedom from discrimination because of political belief. We recommend that complaints involving discrimination on the basis of political belief be accepted and investigated by the commission under the expanded definition of creed proposed in this report."

We have attached a copy of an article which appeared in the *Toronto Globe and Mail* of December 16, 1981, which reports on the firings of 110 public employees in Nova Scotia after a change of government. The facts alone, as cited in the news report, speak

We have attached a copy of an article in the Toronto Globe and Mail of December 16, 1980, which reports on the firing of 110 public employees in Nova Scotia after a change of government. The facts alone, as cited in the news report, speak eloquently of the need to provide human rights legislation as a safeguard for political liberty in line with our democratic tradition.

Family relationship, recommendation 78 of Life Together states: "The commissioners recommend that family relationship be added to the Ontario Human Rights Code as a ground on which discrimination is prohibited. This would enable the commission to investigate many of the problems facing single-parent families and families with children."

While Bill 7 appears to give some protection on the basis of family and marital status, it does not give adequate effect to the submission in the report Life Together in speaking of adults-only apartment buildings.

"The crucial question, however, is whether or not enough suitable housing accommodation for families with children is available within a particular area or community. If the answer is no, then adults-only policies, which discriminate against families with children, should not be allowed."

Criminal record--this is very close to my heart--recommendation 88, Life Together states: "The commission recommends that criminal record be included in the Ontario Human Rights Code as a ground on which discrimination is prohibited."

Although the proposed Bill 7 does provide some protection from discrimination because of record of offences in regard to employment, section 4(2), it does not provide freedom from harassment by the landlord in the provision of accommodation, section 2(2)). This should be remedied.

Sexual orientation, recommendation 90 from Life Together reads: "The commissioners recommend that sexual orientation be included in the Ontario Human Rights Code as a ground on which discrimination is prohibited."

This omission from Bill 7 is the one that causes the most consternation and dismay. The Ontario Human Rights Commission in their hearings and research preparatory to writing their report, Life Together, found widespread support for the inclusion of sexual orientation as a ground on which discrimination should be prohibited. Churches, citizens, community and labour organizations up to the level of the Canadian Labour Congress argued for this extension. It is unconscionable that thousands of men and women in our society must live in fear of losing their jobs, their living accommodation and their right to basic necessities if their sexual orientation becomes known.

I say to you, Mr. Chairman, that Ontario cannot allow the prejudices of some of our population to perpetuate such moral outrage against others. Failure to include sexual orientation in Bill 7 would, in itself, constitute a direct act of discrimination. Such discrimination is unthinkable in legislation that proposes to set a standard for human rights.

Now, Mr. Chairman, we will go to an oral presentation. Terry O'Connor will be first.

Mr. O'Connor: Mr. Chairman, just to give a bit of background as to the nature of our brief, we haven't prepared a whole lot of arguments or repeated a whole lot of arguments. You probably have all kinds of paperwork already in regard to the arguments on the points we have made, so we didn't feel it was appropriate to repeat those ad infinitum. We drew from the report of 1977, Life Together: Report on Human Rights in Ontario, not in the sense that we were cherry-picking, trying to pick the choice items that you left out, but in order to address the items we felt strongly about that had been omitted from the proposed act. We felt that all the background, the arguments, the papers, the briefs had already been presented to this commission and you have access to the documentation, so there was no point in passing it on.

There are four points we have included in our brief today that had been omitted. One is freedom from discrimination on the basis of political beliefs. That is something that affects us as public employees probably more than anyone else; we are in the most vulnerable position. The article in the newspaper that was quoted as an appendix to our brief gives an example of the kind of thing that can take place.

The second is the item on family relationships. We are specifically concerned about adults-only apartment buildings. You have already discussed that with the previous delegation that was here. We are not concerned with senior citizens' apartments; we are concerned with the idea of adults-only apartments. We recognize that people, after they have raised their own children, may want to be free from the pitter-patter of little feet and whatever goes on, but we feel that there are different levels of rights. We feel that the right to housing has a higher priority than someone else's right to be free from the pitter-patter of little feet. When housing is so short and families are under such pressure in regard to housing, we feel that that has to be a higher priority, and the proposed legislation doesn't take that into consideration.

11:40 a.m.

On the question of criminal record, the proposed act goes partway in that in one section it makes reference to freedom from discrimination in regard to employment on the basis of record of offences, which is defined more narrowly than criminal record, and then it doesn't provide it in regard to accommodation. It doesn't provide that freedom from discrimination at all. We think that if there are bona fide reasons why someone shouldn't be permitted to rent certain accommodations because of criminal record then there could be provision to take care of that, but it shouldn't be just carte blanche that anyone is permitted to discriminate against or harass someone on the basis of his record of offences or criminal record. Life Together goes into considerable depth regarding the repeaters in the penal system and the continued punishment that people have to take.

The item we feel most strongly about is the question of sexual orientation. This has come up at many of our conventions. At our conventions we have a cross-section of the community, and there has been a lot of debate on the question of the rights of people with various sexual orientations. People do express their prejudices too. But there has been a lot of support for the view that people should be protected from discrimination on the basis of sexual orientation. Regardless of the minority viewpoint, which might be vocal and might express prejudicial views, we think everyone should have the right to protection.

As we mentioned in our brief, if we enact legislation, a bill of rights or a human rights code that doesn't provide for protection in a specific area of sexual orientation, then we are in fact discriminating in our legislation. It would be a contradiction to have legislation which proposes to set a standard for human rights and which itself discriminates. We think it should be included.

I wish I could give you all the arguments and debate that have been presented at our conventions, but I won't begin to try. The argument gets emotional. People express their prejudices and viewpoints sometimes very logically. We accept them. Without trying to criticize your committee, I heard one being expressed here just this morning. One of the members mentioned a couple of gentlemen getting up and dancing at a school dance. I don't know how many dances I have been to where I have seen a couple of women get up and dance, yet we haven't thought, "Get them out of here. What are they doing?" We haven't reacted to that. Our prejudice is sort of taken as natural.

One concern that was raised by an individual at our last convention was the concern for future generations, our children. I'm a family man, so this struck me strongly. I identify with the gentleman over here. I have 10 children of my own and seven grandchildren, so I'm concerned about children. The argument this person presented was that if we accept homosexuality then we are saying it's okay. What are we teaching our kids if we are teaching that it's okay to be homosexual?

The point that was raised was, what happens if we teach that it's not okay to be homosexual, if some child grows up in a home where all he has heard--and again I'm expressing prejudice too, using the term "he"; it could well be a girl--is that homosexuality is bad; he has heard all the nasty terms about homosexuals and thinks how terrible homosexuals are, and this young person grows up and discovers that he is homosexual?

What image does that person have of himself? The only image he has is that he has to hate himself because homosexuals are people to be despised and hated. Is it any wonder that such a young person might contemplate suicide, might contemplate alcoholism or whatever else? We certainly have a responsibility to the rest of the people in our community, but also to our children, to give them the chance to grow up with a positive image of themselves so that they do not hate themselves because we as a society have condemned homosexuality out of our prejudices.

That is some of the background as to the items we have put into our brief.

Mr. Angus: Mr. Chairman, members of the committee, I find it interesting, to say the least, to be on this side of the table since my last time in the Legislature. I would like to raise with you some mechanical items in the bill, as well as two additional areas that we feel should be covered under the act.

Currently Bill 7 provides that the complainant be advised of decisions that have been made throughout the course of the investigation and the examination of the particular case, but there is no provision other than when the accused has been found guilty, for lack of a better word, of telling them what is going on.

There was a case up in Thunder Bay at the university where a charge of racial discrimination was made. The case was later dropped, and no notification whatsoever was given to those who were accused of discriminating. We think that there should be balance within the bill; that the same options, or the same rights if you like, be available to the accused as well as the complainant.

Secondly, there is an appeal procedure built into the act that is inconsistent. It would appear that the complainant has the right of appeal all the way through, but the accused may only appeal to the Supreme Court of Ontario, I guess it is, following the decision by the board of inquiry. We would like to see that changed so that both parties again have the same rights all the way through the legislation.

We believe it is important to mention two other gaps that we perceive in the legislation--equal pay and the right of privacy. In terms of equal pay, we have occurring in society today, particularly in Ontario and other industrial areas of the world, a rapid change in microtechnology. That rapid change has some very serious affects on the working people, particularly the people in offices who are represented by us. We are now moving into word processing and other kinds of electronic-assisted work. There is a great fear that as a result of that there will be reductions in pay, differential levels of pay for those who are placed on to these machines. We believe, for that reason, that an equal pay provision should be included in this act.

As another example, there has always been a tendency when hiring the handicapped--at least in the past--that you are really doing them a favour, and because you are doing them a favour you can pay them less. A number of years ago, a radio station in Thunder Bay--and I am sorry I keep using Thunder Bay examples, but those are the ones I am most familiar with--had a legally blind person employed with the station. They originally hired the person on a grant, either through Canadian National Institute for the Blind or through a government agency, and then when the grant was over, tried to reduce the person's pay to their share. In other words, they were getting \$100 a month instead of \$200 at that time. It was only because the staff fought it that it was prevented from occurring. We think this bill should provide them with that kind of protection.

Thirdly, in 1977, in the Attorney General's office or the Solicitor General's--one of the two--provision was made for a separate level of pay for native constables employed by the Ontario Provincial Police. They were being paid at a lower level than comparable officers in the regular force. The rationale that the minister used was that because they lived on a reserve they did not have to pay taxes and, therefore, should not get the same rate of pay.

I honestly do not know whether that is still in effect, but I think that kind of discrimination should not be allowed. The vehicle to protect those people is through this bill.

In terms of electronic surveillance, we are all quite familiar with the concern in the post office of the Canadian Union of Postal Workers over electronic surveillance and the right of privacy in the work place. We think that provision should be made in this act to ensure that those rights are not infringed upon.

11:50 a.m.

There is also, combined with the new approach in microtechnology, the ability very precisely to monitor staff in terms of work activity. Without going into the arguments of productivity and what have you, we are concerned that big brother, watching through electronic means, can lead to some very serious problems in the work place, particularly in the level of stress and the health of the employee. We would like consideration for that as well.

Finally, we would like to add our support to comments made in the previous presentation of the Toronto Board of Education on sexual harassment on the point of persistency. With almost half of our membership being female, we are concerned with the strengthening of this act in that regard. I would like to ask our equal opportunities officer, Farida Shaikh, to add some comments on that aspect of the bill.

Ms. Shaikh: Studies in the United States, which have been supported by recent surveys in Canada, indicate that for women who work outside of the home, between 70 and 90 per cent of them are sexually harassed at least one or more times in their lives. This can be of the order of somebody leering at you, as was suggested during the last presentation, or it can be of the order of rape or an attempted rape situation. So it can be quite serious in nature.

Further on that, studies also indicate that 48 per cent of the women who are sexually harassed lose their jobs as a result of that sexual harassment. That is to say, they are either fired directly or they are forced to quit because the situation becomes unbearable at the work place with their employer or with their direct supervisor. There is also a good deal of indication that people who are sexually harassed suffer physiological and psychological stress which reacts in a number of ways in their bodies and on their emotional state.

It clearly is a serious employment-related problem, particularly for women. Because women are in the position of not being managers or supervisors, they are more likely to be more frequently sexually harassed at this time than are men. This is not to say that some men do not experience it.

During the last presentation there was a comment when they brought up the question of eliminating the word "persistent" from the proposed amendments to Bill 7. Somebody raised the notion that if you leered at or looked at a woman who was wearing a particularly low cut garment at work, was that sexual harassment and could they be taken up for it. Well, I have been in offices repeatedly where men have come in with extremely tight pants, or I have worked on Saturdays, which I do on quite a regular basis with the union, and people will come in in unbearably short shorts. I do not assume, as a result of that, that I have the right to sexually harass that person and make their working conditions difficult.

Sexual harassment has direct employment related reprisals for women, particularly at this time, but maybe for men as we equalize positions for men and women in the labour force. However, persistence is not a feature that determines the severity of the impact on the individual.

If your employer solicits a sexual relationship or attempts to impose some kind of force upon you, direct physical force upon you in a situation, it does not have to be repeated. Once is enough. It causes the same kind of employment-related reprisals, if you turn down that situation, if you encounter it once or 15 times. I would really urge you to remove that word "persistent" from there. It is a serious problem for women. It is one that we are quite concerned about.

On another point, I would just like to make a comment that Ontario has a law covering the issue of equal pay for equal work. The Canadian Human Rights Act in section 15 covers the concept of equal pay for work of equal value. This is of particular concern to women, the disabled, native people, racial minorities, because many of these people, particularly women, are ghettoized into a limited number of occupations that are characterized by low pay, that are personal service in nature, that are highly controllable and that right now are going to be extremely vulnerable to technological change. They are among the front lines of people who are going to be affected by technological change.

There is already a tremendous gap between, for example, men's and women's wages. Women make, on the average, 58 per cent of a man's wage in Ontario. With the onset of technological change and the introduction of it in areas where women are heavily concentrated--clerical work, hospital work, library work, all of which many of our members are engaged in--what's going to happen is the same sort of situation that we saw with the introduction of automation in the post office.

When automation was originally introduced in the post office, the people who were put on the coding desks were primarily women because manual dexterity is thought to be a characteristic

of women, and they were automatically declassified two grades and their wage levels were dropped two grades. It took the Canadian Union of Postal Workers a considerable amount of time and effort and a strike to get them reclassified to their original position. We expect that this kind of thing will happen to women on quite a widespread basis, and it will thereby increase the gap between men's and women's wages. We feel that it's really important that the issue of equal pay for work of equal value be enshrined in this legislation following the Canadian Human Rights Code.

I would like to point out that there is pressure to amend the Canadian Human Rights Code to exempt technological change in labour shortages from the equal pay for work of equal value provision. We are resisting that pressure, and I think many other groups in society are as well. It's extremely important that technological change be covered by an equal pay for work of equal value provision and that Ontario finally catch up with the realities of women's work on this issue.

Ms. Nicholson: Mr. Chairman, if you have any questions we will be glad to answer them.

Mr. Chairman: Thank you very much.

Mr. R. F. Johnston: Mr. Chairman. that's a very comprehensive brief, especially when you put it all together with the verbal presentations at the end. I'm in agreement with a great deal of it, so it's difficult to ask questions. I don't really need to play devil's advocate; we have enough devils and they will be glad to do that on their own, I think, without my pursuing that. There were a few points of information that I would like, if we could have them.

On sexual orientation, to start off with, how many of your locals have negotiated in their contracts any kind of protection in terms of sexual orientation and how have they done that if they have done it?

Ms. Nicholson: To give you the numbers on that, Richard, would be very difficult because that comes from our research and we deal with over 500 individual locals here in Ontario. Many of those locals have more than one contract, so we are dealing with a tremendous amount. It's the policy of our organization to have that in our contracts. We have got it in many contracts, particularly in libraries (inaudible). Many of our contracts have it. It is our policy to do it, but as far as numbers are concerned I would have to go to our research to get that number for you.

Mr. R. F. Johnston: If that's easy to get, it would be helpful to me. I'm just trying to build a case for the amount of activity that is already going on in that field so that we are not breaking particularly strange ground in this area. If there are any samples of the wording of what you have in contracts, they would be useful, if that is possible at all, just in terms of how you tried to bring in that kind of protection for your workers.

Ms. Nicholson: We can get you samples of the language.

Mr. Chairman: Could that be forwarded to the committee through the clerk?

Ms. Nicholson: We can get you samples of language we have.

Mr. R. F. Johnston: The other interesting thing I just noticed is that although the Ontario Federation of Labour has made a presentation to us and we know their position, I don't think we have every received the actual motion that the CLC now has. Is it possible to get access to that through you, or would you prefer that we address it directly to the CLC?

Ms. Nicholson: The CLC deals with the federal government. Individually, we deal with the federations, then deal with the provincial government; so I would suggest that the CLC probably is the place for you to get that.

Mr. R. F. Johnston: Can we do that, Mr. Chairman--have the clerk get that so we have the position firmly down as to the wording of the CLC's position on sexual orientation?

Ms. Madisso: I'm sorry. Start again. What do you want me to get?

Mr. R. F. Johnston: The motion that the CLC has passed on sexual orientation.

Many of the items you have down have been dealt with by other groups, and I won't try to deal with those. One that hasn't been dealt with a great deal is the matter of political belief as an exclusion. I wonder if, besides the Nova Scotia example, where patronage of that sort has just been located for a long time--in our many changes of government in Ontario we haven't found that to be as much of a problem, but there's a lot of this--

12 noon

Mr. Brandt: Not since the last change.

Mr. R. F. Johnston: There are some questions that are raised by people who oppose the notion of political beliefs being a protectorate, and I'm sure as a public service union you are the butt of many of those arguments. I wonder if you could try to respond to a few of them.

One example that has been raised with the CBC, for instance, is that if unions involved with the CBC were to take public political positions that could be seen to be influencing public opinion, et cetera. During the Quebec elections especially, Radio Canada personnel were often accused of being involved in that way, and there's an argument that that could have undue influence, et cetera.

The other would be, how would the government, when it changes--if it's not going to do the total work road-crew changes that are done in Nova Scotia, et cetera--replace a deputy minister who may be very, very involved in the political beliefs of the previous government? We have seen several examples of that which I could think of in terms of the BILD program and other things. How does an incoming government exclude that person from inner decision-making when the transfer of government takes place? I would like you to deal with that argument, if you would.

Then, of course, the other large one is OPSEU, CUPE, the whole matter of whether in the city of Toronto Local 79 should be able to give donations to individual candidates, and in the provincial jurisdiction whether OPSEU should have any right to express political opinions during a campaign. I wonder if you could speak to those a little bit because we haven't had a great deal of discussion on that.

Mr. Angus: Mr. Chairman, I would like to respond. Having had the opportunity to wear both hats, both as a practising politician in the sense of being a member of this House and one who aspires to go to the federal House, and having been labelled quite obviously in my community as a New Democrat, I have thought through this whole area for many years. I have been told that in the past in Ontario, in the northwest many years ago, activities such as are still happening in Nova Scotia happened throughout Ontario; that after a change of government there were actually lineups outside the new member's office the next morning of people looking for work because everybody had lost his job the night before. That was particularly true in highways.

I don't believe, nor does CUPE believe, that a person's on-the-job responsibilities should impinge on his personal time, his personal rights to expression. That expression relates to one's political beliefs. To some people their political beliefs, their political persuasion, is their religion; it's their way of dealing with the brotherhood of man, if you like, of bringing about those changes that they think appropriate to better society's ability to function for all people.

There have been in Ontario in the last couple of years some specific attempts to discriminate, either through existing legislation or through the interpretation of existing legislation, against individuals who wish to run for political office. The individuals I am thinking of have been Conservatives and New Democrats; I honestly don't know offhand if any of the Liberals have found themselves in the same situation. There is the example of the OPP officer in the Sudbury area, the example of a regional economist with the Ministry of Northern Affairs in Thunder Bay who was a federal candidate.

It was fine for him to be a federal candidate, but the moment he decided to seek the presidency of the federal riding association he was warned by his superiors that that was not allowed and should he accept that position he would be terminated from his job. It is my understanding he has since won that case in arbitration, but in the meantime he had left the employ of the province.

In terms of your question about the deputy minister, I do not think there is a question in anybody's mind that deputy ministers, and probably even some people in one level below, are political animals; that they help to shape the policies of the government of the day. That applies to any party. I think it is legitimate to expect that they are there for the duration of the government or at the whim of the government.

But those who implement policy, whether they be the guy that

runs the transit and builds the highway, the economist who analyses or the clerk steno who types, there is no reason to believe--because they happen to have political beliefs, and because in their own way they happen to make it obvious to somebody, whether it is their friends or neighbours by putting up a sign during an election, or by becoming active in a riding association--that they would, by doing so, impede the operation of the government. That is what the concern is. For that reason I believe that all Ontario government employees, if you like, should have that right--with the exception of those most senior in the policy making areas.

Obviously, if an employee is abusing work time, whether it be for political purposes or whether it be because they are a member of the Kiwanis and are running their Christmas cake drive out of their office instead of doing the work that they are hired for, of course they should be disciplined, because that is not what they are hired for. But what one does in his private time is his private right, and I do not think we should take it away from him. In fact we should protect him.

In terms of the other comments about the donations, the right of free speech, you mentioned the CBC. There is a difference between on-air influence and abusing the responsibility that the media have in shaping public opinion; to do more than state the facts or provide an opinion in an editorial, and trying to shape public opinion through innuendo--that is a harsh word and I cannot find a proper one--by indirect manners, rather than what is one man's opinion, or something like that. But how you read the news, as in the Quebec election thing, can affect it. I do not think that is right. But those journalists have every right in the world, as far as I am concerned, to be activists within their own political party, just as they have the right to be activists in the Kiwanis, the Kinsmen, their church, their ethnic group or whatever. Those are my comments.

Mr. R. F. Johnston: I just wanted to get them on the record. Thank you very much.

Mr. Angus: I have been waiting to say that for quite some time.

Mr. Chairman: We have time for one more question, Mr. Riddell.

Mr. Riddell: First, let me congratulate you on a well organized brief and the way in which you shared the responsibilities for presenting the brief. I am pleased to see, Iain, that you do feel the accused have some rights, as well as the complainant. I certainly agree with you there. I would like to get into a debate with you, sir, on sexual orientation but here it would be, I guess, a debate of prejudices. I would dearly love to be able to sit down with some of these members of the cloth to hear what their comments would be on sexual orientation. However, I do not want to get it into this.

On political beliefs, I was going to make the same comment that Richard did. In your answer it would appear, Iain, that we

have a law for some but not a law for all. You are quite prepared to see discrimination against those people in government who help to shape policy but you are not prepared to see discrimination against those people who implement policy. It is a case, as I say, of a law for some but not for all. I am not too sure that I agree totally with you on that.

12:10 p.m.

As far as a criminal record is concerned, I would like to try to get my point out by using an example. I am a farmer. I need somebody to assist me in the farming operation and a chap comes along who has a history of burning down barns. Maybe he served his penalty. Are you suggesting that I should be compelled to hire that person with the thousands of dollars that I have invested in my operation?

As I say, this person has maybe served his penalty but he may still have that tendency to want to burn the barn down. He maybe is still an arsonist. Are you saying that I should be compelled to hire that person because he has served his penalty?

The point I am trying to make is that it is very easy for people to come in and make suggestions who do not have any what I call money on the table. There are all kinds of businessmen who have hundreds of thousands of dollars invested. Then somebody comes along and says, "Look, you really have no choice as to whom you can hire because of the human rights bill that we have enacted in the Legislature." I always think there are two sides to every coin. I would like to hear your comments on that.

Mr. Eaton: There's a thing in there about a bona fide reason.

Mr. Riddell: As I say, he served his penalty, Bob.

Mr. Eaton: Yes, but there is a thing in there about bona fide reason in the act.

Mr. Riddell: I am quoting a good example. I can name the chap who has a history of burning down barns. He has served his penalty and now he comes to me.

Mr. Eaton: I think you can make the case that you have a bona fide reason for not hiring him.

Mr. Chairman: We will have time to debate that. If you wish to respond briefly, fine.

Ms. Nicholson: We will respond briefly to it, Mr. Chairman.

Mr. O'Connor: Article 10 on page 4 of the bill is something that speaks to that kind of thing. If freedom from discrimination on the basis of a criminal record was provided for, article 10 says, "A right under part I is infringed where a requirement, qualification or consideration is imposed that is not a prohibited ground of discrimination but that would result in

disqualifying a group of persons who are identified in common by a prohibited ground of discrimination, except where, (a) the requirement, qualification or consideration is a reasonable and bona fide one in the circumstances."

If a person had a history of burning barns and you were a farmer, I would think that you would have grounds to be able to say, "No, I cannot hire that man." But if what you had was a garbage dump and you wanted someone to go around and collect garbage, the fact that a person burned barns, I do not think is really relevant; or the fact that a person had some other kind of record of offence.

The fact that a person went on strike illegally might not be relevant at all to the fact that a person wants a job as a storekeeper in your store, or something like that. I think the question of the relevance of the offence has to have some bearing on it. You can put such a provision in the act to permit discrimination where discrimination is relevant.

Mr. Riddell: Maybe this person would not come to me for a job on the farm, but he might go to some businessman in town, some retailer, to apply for a job. He has never burned down a retail store before, but he has burned down a barn. Are you suggesting that the retailer be compelled to hire the guy?

Mr. O'Connor: I think the opposite is that you are suggesting that such a person should never be allowed to work again.

Mr. Riddell: No, I am not suggesting that. I am suggesting that you have to be awfully careful about the type of establishment that you are bringing that person into.

Mr. J. M. Johnson: He could get a job selling fire insurance.

Mr. Chairman: I am going to have to cut that off. Ms. Copps, do you have a question?

Ms. Copps: I have one brief question. On the issue of sexual harassment I think one of the things that has been hanging up the committee is the general definition, in toto and not necessarily the issue, of persistence. You get into the issue of whether leering is sexual harassment as opposed to attempted rape, et cetera.

In your experience--I know there are a number of definitions that have been used at various judicial levels--I wonder if you had another definition of sexual harassment that would cover some of the objections that people in this committee have with respect to removing the word "persistent"?

Ms. Nicholson: The British Columbia Federation of Labour did a paper on sexual harassment, which I would be very glad to send to the committee, that has a seven-point definition included in it. Also there are two recent books, one by Constance Bachhouse and Leah Cohen, which explain that very clearly, and one by an

American author named Mitchell, whose first name I do not remember, which goes into quite an extensive legally based definition of sexual harassment. She has culled it from the results of human rights decisions in the US and from arbitration decisions and court cases on the issue. I would hesitate to wing it at this point.

Ms. Copps: If you could maybe send us a copy of where there has been legislative precedent I think that would help us. The definition we have here is fairly ambiguous. I think that is why people have been rather upset about it.

Ms. Shaikh: I do not have a problem with the definition contained in this. I think the only problem is with the word "persistent". It is wide enough to cover most situations. I think the operating factor with sexual harassment as opposed to other forms of sexual harassment--the way we use the term "sexual harassment" right now is in the context of the work place; we use other terms, sexism, rape, all kinds of other terms, to indicate the same kinds of activities outside of the work place.

Any behaviour that brings about specific repercussions in the work place that is sexually oriented, or that can potentially bring about specific repercussions in the work place, that sort of repercussion that extends from making it impossible to work with co-workers, or making it impossible to walk into your supervisor's office and do normal work, or making you very uncomfortable about the way you are dressed all the time--those kinds of stress would be involved in my definition of sexual harassment.

Ms. Copps: I understand that, but when you said that about wearing a dress all the time you are implying some kind of repetitiveness and that is where the whole issue of persistence as opposed to a single incident comes into question.

Ms. Shaikh: Okay, but again, if you put in the qualification of persistence, what happens when you are in a rape or attempted rape situation or you are in a situation where somebody is calling your home all night or you are in a situation where you are getting work reassigned because you are not falling into the informal cues as well as the formal cues given to you by the person in a position of authority, those kinds of things have to happen only once in order for them to have a severe effect on your employment situation. If in the definition you include the word "persistent" a person would have to face a rape situation or an attempted rape situation or a work-reassignment situation a number of times in order to try to redress--

Ms. Copp: I think the situation of rape or attempted rape would fall into the Criminal Code as well as the Human Rights Code, so you are dealing with a criminal offence, whereas this is attempting to be quasi criminal. Anyway, I do not want to get into discussion about that.

Mr. Chairman: I think perhaps the committee is looking for direction. It has been indicated we see difficulties with dropping "persistent" in some areas. We think it is appropriate in some other areas. It is intended to extend coverage much further

than a lot of people are asking us for. So if you can come up with alternatives for us we would appreciate that. All members of the committee from all sides have been trying to grapple with this situation.

I would like to thank you for appearing before us today and sharing your thoughts with us. We also appreciate your willingness to provide us with some more information. I think there have been three or four requests. If you can forward that to the committee we will make sure it is circulated.

12:20 p.m.

Ms. Nicholson: We will do that as soon as possible, Mr. Chairman.

In conclusion, may I say thank you to the committee. We are urging the government of Ontario to amend the proposed Bill 7 to include those four specific recommendations. The first four recommendations were the very heart of our presentation. We say to you very honestly that only by doing so can we live up to the creed set out in the preamble to the act, and that is recognition of the inherent dignity and the inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world.

Mr. Riddell, on closing, I believe Father Ryan is scheduled to be here, and I am sure you will have some good cross talk with him.

Mr. Riddell: Thank you very much, and I will talk to Father Mooney back home.

Mr. Chairman: Thank you. The committee is probably aware we are under time difficulties. Professor George Heiman has been rescheduled for two o'clock. However, we do have the social action committee of the First Unitarian Congregation of Toronto, which we would like to hear before lunch. Reuel Amdur.

Mr. Amdur: Mr. Chairman, I see the statement that was prepared by the social action committee of the First Unitarian Congregation is being distributed at this time. Does this mean that the members have not had a chance to read it before?

Mr. Chairman: If it has been distributed directly to them, I would suggest they would have had.

Mr. Amdur: The reason I am raising this is my original intention was to speak to it rather than to read it to you. Since you have it before you I think what I will do is speak to it rather than read it to you.

To begin with, an apology, and that is that it is entitled A Brief on Bill 209. It was drawn up before the hearings of the social development committee were terminated before they began by the election campaign. It was unchanged because the revision from 209 to 7 did not affect any of the specific concerns that are raised in this brief.

Essentially the brief makes three points. First, it expresses the concern that you have heard from other people this morning about the failure to include sexual orientation as a protected area under the code. One of the things about our culture is that there are various areas of discrimination or prejudice which are very deeply ingrained. Racism has been one, and it has begun to fade considerably over the years, and discrimination on the basis of religion again is one that has begun to fade.

The discrimination on the basis of sexual orientation, attitudes toward people whose sexual behaviour is different from our own, is one that fades much more reluctantly. It is our conviction that it is not unlike the others. It cuts closer to our grain. It is something that comes to us in many ways in our upbringing and is a kind of attitude that is not easily removed, but the same principles are involved. There are human beings who have these behaviours which they practice in their privacy and do not infringe on other people's rights in doing so and their rights, in turn, should not be infringed upon.

Where the behaviour of people who are homosexual violates other people's rights, there are laws to deal with such situations. Our feeling is that provision on sexual orientation should be included in the Human Rights Code.

The second point we want to address is that of protection of people's rights to purchase property. In a communication from the director of conciliation and compliance of the Ontario Human Rights Commission, we learn that counsel for the commission is of the belief that section 3 of the code does not cover the purchase and sale of real property; it covers only rental. We see that as a serious deficiency. As well, in the current code there is provision covering commercial property, but that provision is removed in Bill 7, so that even in terms of rental, that is weakened in this area.

It has been argued that the provision of Bill 209--I am not quite sure what the numbering is in the current bill; I think it is probably the same--part I, section 3, recognizing a right to contract on equal terms without discrimination, takes care of these concerns. We would argue that that is not clear. What may be involved in that is simply that once a contract is signed the behaviour under the contract has to be handled on an equitable basis, but it is not clear that there is a right to a contract.

The obvious kind of language that would be required to deal with this situation would be language forbidding discrimination on the basis of, and you would set this out, in the purchase and sale, rental, lease, mortgage. List the kinds of things that are deliberately prohibited rather than talking about occupancy, which has been interpreted in the way that I have described by counsel for the commission itself.

The third issue that I wish to address briefly is the issue of violations of the provisions of the code by the government itself. The provincial government has proposed that it be given two years' respite in which to bring into accord with the code its own practices, its own laws and regulations. It seems to me that

this is undesirable for a couple of reasons. First of all, I think it sets a rather poor example for the citizenry to say: "You are stuck with it right now. We'll take our sweet time in coming into compliance with what is just and equitable, what is right for the people of Ontario."

Second, it fails to recognize the usefulness of the code in assisting government in cleaning up its own house where there are shortcomings. It is by the very bringing of complaints that the government can be assisted to make the necessary changes in regulations and in laws to come into compliance with this proposed new code. In that context we suggest that six months is more than enough time to deal with any minor housekeeping things.

Those are our comments. I would open myself to any questions and concerns that people might have.

12:30 p.m.

Mr. J. M. Johnson: I take a little exception to some of your comments that the government should clean up its own house. Maybe they do need to clean it up but I throw a challenge to you, sir, that I think some of the churches should set a better example. I am not opposed to churches. My son happens to be a minister, so I hope what I say is not taken out of context.

What I am concerned about is that it is easy for people from the church to come before the committees and tell us what we are doing wrong. I think in many instances, churches practice discrimination. Take a look at the number of women in the pulpits. It is very easy to preach, but it is a lot harder to practice. So while you say that we should clean up our house, I challenge you and the church to do the same.

Mr. Amdur: I think that is a fair comment. My comments with regard to the deeply ingrained prejudices regarding homosexuality are really founded in large measure on the religious attitudes towards homosexuality that come from the traditions that are generally shared in the community. It is taking a very long time to get over these.

I don't want to be defensive. However, my comment with regard to the shortcomings of the government was not to say that there are shortcomings but to say that the government should not impose two years of ability to forgo compliance with the legislation for themselves when asking that everyone else comply. I am not suggesting that churches, or my church in particular, are in some way pure.

Mr. Riddell: Dealing with your second point, lack of protection against discrimination in the purchase, sale and/or mortgaging of real property, I am wondering if many of the provincial governments, if they had this kind of bill enacted in their province, could be brought before the human rights commission, governments which now have passed legislation restricting the foreign purchases of farm land? A section of this bill says that this act takes supremacy over every other act. We have a government, then, that passes an act restricting foreign

investment in farm land. Are they creating an offence? Could they be brought before the human rights commission?

Mr. Amdur: I am not a lawyer and I am not that familiar with the legislation that Mr. Riddell is addressing. However, my impression of the matter is that the legislation talks about people living in the province having certain--

Mr. Eaton: Residency or nonresidency, race, colour, creed or whatever else.

Mr. Amdur: So if it is a matter of people living in-- that may be a different matter; I am not sure. If there were problems, perhaps there could be some wording that could deal with it. However, the apparent omission as it now exists, I think is a serious one that needs to be addressed.

Ms. Copps: Just to clarify that, I think there is a section in the act that specifies that at times you can discriminate on the basis of citizenship or landed immigrant status in certain situations. I think that would probably cover that situation, would it not?

Mr. Riddell: But, Sheila, in many cases you have a realtor who is very much involved in this whole plan of acquiring farm land. The realtor could well be and probably is a resident in Ontario. Could the realtor take the government before the human rights commission for stopping him from buying this land? As I say, quite often they are very much involved in this whole field.

Mr. Eaton: It depends on what grounds they stopped him.

Ms. Copps: You wouldn't stop him in that instance, but if he tried to dispose of it either legally or illegally to an outside investor, then obviously that would have to be dealt with. But the code itself would allow that kind of discrimination on the basis of noncitizenship or non-landed-immigrant status.

Mr. Chairman: We will have lots of time for that.

Mr. Riddell: Sheila and I would debate against other.

Mr. Chairman: Are there any other questions of Mr. Amdur while he is here? If not, thank you very much, sir, for appearing before us today and bringing us the views of your congregation.

Ms. Copps: Mr. Chairman, before we adjourn for lunch I would just raise one point. It had come to my attention this morning that there is a group by the name of Positive Parents that previously did appear before the committee but is scheduled to reappear next week. I wonder if there is a policy on that, because, as I recollect, at that time the president, when he did appear, refused to speak before the committee and got up and left when he was questioned, and I don't see why we should re-entertain the same group before a committee hearing.

Mr. Chairman: The (inaudible) looked into it, in fact. I think it was that there were a few people who didn't wish to be associated--

Ms. Copps: I think if you would take a look at the minutes of that committee hearing I specifically asked Mr. Newton to appear before the committee because I did have some questions, and he refused to do so as the president of Positive Parents. And I really don't see why we should take up the time of the committee to re-entertain the appearance of the same person who refused to answer the questions of the committee at that time.

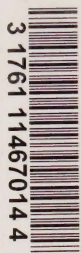
Mr. Chairman: Perhaps we can adjourn, and if you want to bring that specific one to us, let us look at it.

Ms. Copps: Well, it is Positive Parents of Ontario, Mr. Stewart Newton, who is scheduled to reappear in a week's time. That's the specific incident.

Mr. Chairman: We will look into that.

The committee adjourned at 12:37 p.m.

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